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OFFICE OF MANAGEMENT AND BUDGET

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CHAPTER 4-12-09
LIMITED COMPETITION, NONCOMPETITIVE, AND EMERGENCY PROCUREMENTS

4-12-09-01. Competition may be waived or limited.

1. A purchasing agency may request to limit or waive competitive solicitation requirements pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05.

2. Competition may not be limited or waived to satisfy preferences or for the convenience of the purchasing agency.

3. Circumstances under which ~~a deviation from procurement procedures to limit or waive competition and procure through negotiations is appropriate pursuant to subsection 2 of North Dakota Century Code section 54-44.4-05,~~ competition may be waived or limited without a written determination, include:

   a. Contracts for legal services, subject to the requirements of North Dakota Century Code section 54-12-08;

   b. Contracts for professional witnesses to provide for professional services or testimony related to existing or probable lawsuits in which the state may become a party;

c. Contracts for temporary administrative law judges pursuant to North Dakota Century Code section 54-57-02;

d. Contracts for ~~medical doctors, dentists, psychologists, and other~~ medical specialists;

e. Purchases of copyrighted printed and electronic works, including books, ~~newspapers, magazine~~ subscriptions, and ~~periodicals~~ prerecorded audio and video materials, when only available from the publisher or producer;

~~f. Prerecorded audiovisual materials, including records, tapes, cassettes, compact disks, slides, transparencies, films, and videotapes;~~

~~g.~~ f. Purchases of materials required for manufacturing and production by a purchasing agency engaged in manufacturing and production operations;

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~~n.~~ m. Contracts for performers, entertainers, and guest speakers, excluding contracts for education, instruction, or training; ~~and~~

~~o.~~ n. Medications, pharmaceuticals, metabolic foods, food supplements, food replacements, vitamins, ~~and~~ therapeutics, and medical devices as prescribed by health care professionals for patients of a state facility or clients of a state program~~.~~;

o. Purchase of heating fuels, ready-mix cement, sand, gravel, road oil, and bituminous mix which can be procured using limited competition to bidders or offerors within a specific geographic area; and

p. Contracts for insurance placed through an independent broker, agent, or contractor when the independent broker, agent, or contractor was hired through a competitive or limited competitive process.

4. A prior written determination is required for all other requests for limited competitive and noncompetitive purchases subject to the provisions of this chapter and the terms of the purchasing agency's delegated purchasing authority.

History: Effective August 1, 2004; amended effective October 1, 2012.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-02.1, 54-44.4-04, 54-44.4-05

4-12-09-02. Limited competitive procurements.

1. Competition may be limited pursuant to North Dakota Century Code section 54-44.4-05 under circumstances in which the deviation from the procurement procedures to limit competition is determined to be appropriate, including:

   a. When products or services exclusive to particular individuals or business entities are required and competition for the proprietary product or service exists;

   b. When circumstances require that commodities or services be provided by bidders or offerors within a specific geographic area~~, such as equipment requiring local service, onsite service within a specific time, or delivery of readymix concrete~~; or

   c. When it is determined that a competitive sealed bid or competitive sealed process is impracticable or not in the best interest of the state.

2. Whenever limited competitive procurements are to be made, a written determination ~~will be attached to the procurement file. The determination must be accompanied by a written~~ must include an explanation as to why the competition should be limited and why a fully competitive procurement method is impracticable or not in the best interest of the state. The purchasing agency ~~must~~ shall provide evidence necessary for an independent examination and determination of the material facts of the procurement.

3. The purchasing agency ~~will~~ shall approve ~~noncompetitive~~ limited competitive procurements within its delegated authority.

4. When the procurement is outside the scope of the agency's delegated authority, prior written approval of the state procurement ~~manager or designee~~ office must be obtained.

~~5. The purchasing agency may issue a notice of intent to make a limited competitive purchase to determine if other sources are available.~~

~~6.~~ 5. The purchasing agency shall obtain the level of competition practicable.

6. The written determination must be retained in the procurement file.

History: Effective August 1, 2004; amended effective October 1, 2012.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-04, 54-44.4-05

4-12-09-03. Noncompetitive procurements.

1. Competition may be waived pursuant to North Dakota Century Code section 54-44.4-05 under circumstances in which the requirements are a sole source or can only be met by a specific commodity or service exclusive to a particular individual or business entity to the exclusion of competing vendors, commodities, or services.

2. A noncompetitive procurement is not justified on the basis of any of the following circumstances:

   a. The lack of adequate advance planning for the procurement of the required commodities or services;

   b. Delays in the procurement caused by administrative delays, lack of sufficient procurement personnel, or improper handling of procurement requests or competitive procedures; or

   c. Pending expiration of budget authority.

3. Whenever noncompetitive procurements are to be made, a written determination ~~will be attached to the procurement file. The determination must be accompanied by a written~~ must include an explanation as to why it is not practicable to award a contract by a competitive procurement method and why a noncompetitive procurement is in the best interest of the state. The purchasing agency ~~must~~ shall provide evidence necessary for an independent examination and determination of the material facts of the procurement.

4. The purchasing agency ~~will~~ shall approve noncompetitive procurements within its delegated authority.

5. When the procurement is outside the scope of the agency's delegated authority, prior written approval of the state procurement ~~manager or designee~~ office must be obtained.

~~6. The purchasing agency may issue a notice of intent to make a noncompetitive award to determine if such an award is appropriate.~~

~~7.~~ 6. The procurement officer shall conduct negotiations, as appropriate, regarding price, delivery, and terms. Such negotiations must be conducted in accordance with chapter 4-12-12.

~~8.~~ 7. The procurement officer responsible for the noncompetitive procurement shall prepare and retain in the procurement file a record of the noncompetitive procurement that includes the written determination, contractor's name, description of the commodities or services procured, and contract amount.

History: Effective August 1, 2004; amended effective October 1, 2012.
General Authority: NDCC 54-44.4-04
Law Implemented: NDCC 54-44.4-04, 54-44.4-05

4-12-09-04. Emergency procurements.

1. Procurements may be made under emergency conditions in a circumstance when there is insufficient time for usual competitive procurement methods and which involve public health, public safety, or when immediate expenditures are necessary pursuant to North Dakota Century Code section 54-44.4-02. If the circumstance does not meet the provisions of North Dakota Century Code section 54-44.4-02, a ~~limited competitive~~ determination to limit or waive competition must be made.

2. An emergency procurement need not be made through competitive sealed bidding or competitive sealed proposals but ~~shall~~ must be made with competition that is practicable under the circumstances.

3. The purchasing agency shall limit the quantity of commodities or services being purchased to that necessary to meet the emergency circumstance.

4. The purchasing agency ~~must~~ shall prepare a written determination for the use of emergency procurement procedures, including an explanation as to why emergency conditions exist, a description of the required commodities or services, and evidence necessary for the independent examination and determination of the material facts of the procurement.

5. The responsible agency official ~~must~~ shall promptly forward the emergency determination to the state procurement office after the procurement.

6. The procurement officer shall conduct negotiations, as appropriate, regarding price, delivery, and terms. Such negotiations must be conducted in accordance with chapter 4-12-12.

7. The procurement officer responsible for the emergency procurement shall prepare and retain in the procurement file a record of the emergency procurement that includes the emergency determination, description of the commodities or services procured, and basis for the selection of the vendor.

History: Effective August 1, 2004; amended effective October 1, 2012.
General Authority: NDCC 54-44.4-02, 54-44.4-04
Law Implemented: NDCC 54-44.4-02, 54-44.4-04

4-12-09-05. Notice of intent to make a limited competitive or noncompetitive purchase.

1. A purchasing agency may issue a notice of intent to make a limited competitive or noncompetitive purchase to determine if other sources are available and if such an award is appropriate.

2. When considering a request by a purchasing agency to make a limited competitive or noncompetitive purchase, the office of management and budget may require the purchasing agency to issue a notice to determine if such an award is appropriate.

3. The notice must include the name of the purchasing agency and the procurement officer, a description of the needed commodity or service, a description of the intended procurement method, and a statement that vendors are permitted to submit bids or proposals for equivalent commodities or services.

4. The notice of intent to limit or waive competition must be placed on the office of management and budget procurement information website, must be issued to approved vendors on the bidders list for the commodity or service being purchased, and may be sent to other known potential bidders.

5. The purchasing agency shall allow a minimum of seven calendar days after issuance of the notice for interested parties to submit a response to the notice.

6. If no response to the notice is received, the purchasing agency shall submit the notice and results as justification for the limited competitive or noncompetitive purchase.

7. If an interested party responds to the notice, the purchasing agency shall evaluate the response.

   a. If the offered product or service is not responsive to the requirements, the procurement officer shall send written notice, including the reason for rejection.

b. If the offered product or service is responsive to the requirements, the purchasing agency may determine it is in the best interest of the state to award a contract and shall submit the notice and results as justification for the limited competitive or noncompetitive purchase; or

c. The purchasing agency may cancel the notice and proceed with a competitive procurement process.

History: Effective October 1, 2012.
General Authority: NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-12, 54-44.4-14
Law Implemented: NDCC 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-09, 54-44.4-12, 54-44.4-14

4-12-09-06. Work activity center contract awards.

1. Pursuant to North Dakota Century Code chapter 25-16.2, the office of management and budget or a state agency may make a direct purchase of commodities and services from a work activity center.

2. The office of management and budget may establish term contracts for the acquisition of commodities or services from work activity centers. Such term contracts may be cooperative purchasing contracts pursuant to North Dakota Century Code section 54-44.4-13.

3. Prior to awarding a direct purchase from a work activity center, the office of management and budget or a state agency shall prepare a written determination that:

   a. The work activity center is licensed by the department of human services, located in North Dakota, and operated by a nonprofit corporation in accordance with North Dakota Century Code section 25-16.2-01;

   b. The commodities or services are acceptable; and

   c. The commodities or services are offered at a fair market price.

4. For purposes of subsection 3:

   a. "Acceptable" means the commodities or services conform to specifications, terms of delivery, quality, and serviceability.

   b. "Fair market price" means a price found to be reasonable through methods such as comparing the current price of similar goods and services or examining costs to produce the goods or provide the services. A notice of intent to award a contract to a work activity center may be issued to determine whether the price is reasonable.

5. The written determination must be retained in the procurement file.

History: Effective October 1, 2012.
General Authority: NDCC 25-16.2, 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-13
Law Implemented: NDCC 25-16.2, 54-44.4-02, 54-44.4-04, 54-44.4-05, 54-44.4-13

TITLE 46

LABOR DEPARTMENT

OCTOBER 2012

CHAPTER 46-02-07

46-02-07-01. Definitions. As used in this title:

1. "Administrative" means an employee paid on a salary or fee basis and employed in a bona fide administrative capacity, but is not exclusive to any employee whose primary duty consists of:

   a. The performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customer; and

   b. Who customarily and regularly exercises discretion and independent judgment.

2. "Agricultural employment" means employment on a farm, for a farmer or on a farm as an incident to or in conjunction with such farming operations, including preparation for market, delivery to storage or to carriers for transportation to market.

3. "Casual employment" means employment that is irregular or intermittent.

4. "Domestic service employment" means services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom the employee is employed.

5. "Engaged to wait" means when employees are required to remain on call on the employer's premises or so close thereto that they cannot use the time effectively for their own purposes and thus are considered to be working.

6. "Executive" means an employee paid on a salary or fee basis and employed in a bona fide executive capacity, but is not exclusive to any employee whose primary duty consists of:

a. The management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof;

b. Directing the work of two or more other employees therein; and

c. The authority to hire or fire other employees or whose suggestions as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight.

7. "Highly compensated employee" means an employee who is paid total annualized compensation of one hundred thousand dollars or more, which includes at least four hundred fifty-five dollars per week paid on a salary or fee basis. The employee's primary duty includes performing office or nonmanual work.

~~7.~~ 8. "Nonprofit" means a nonprofit corporation organized under the laws of this or another state.

~~8.~~ 9. "Occasional and sporadic" means infrequent, irregular, or occurring in scattered instances.

~~9.~~ 10. "Professional" means an employee paid on a salary or fee basis and employed in a bona fide professional capacity, but is not exclusive to any employee whose primary duty consists of:

a. Work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

b. Work requiring the consistent exercise of discretion and judgment in its performance; and

c. Work that is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

~~10.~~ 11. "Residential care establishment" means an institution primarily engaged in the care of the sick, the aged, or the mentally ill residing on the premises requiring general treatment or observation of a less critical nature than provided by a hospital. Such institutions may include nursing homes, rest homes, convalescent homes, homes for the elderly and infirm, and the like.

~~11.~~ 12. "Retail establishment" means an establishment in which seventy-five percent or more of the annual gross sales are sold to the final consumer and are not sold for resale, and is recognized as retail sales or services in the industry.

13. "Salary or fee basis" will be interpreted according to the Federal Fair Labor Standards Act.

~~12.~~ 14. "Service employee" means any employee who is providing direct service to the customer and to whom that customer shows appreciation for that service by tipping that employee for the direct service. The employee must regularly and customarily provide personal face-to-face service to individual customers, which the customer would recognize as being performed for his or her benefit. Services such as cooking and dishwashing are not included.

~~13.~~ 15. "Service industry" means an industry in which the principal activity is to provide goods and services directly to the consuming public.

~~14.~~ 16. "Taxicab driver" means an individual employed as a driver by a taxicab company; where the service is a computer or radio dispatched door-to-door service but not a motorcoach or a routed system.

~~15.~~ 17. "Tip credit" means the amount or percentage by which an employer is allowed to reduce the minimum wage for a tipped employee.

~~16.~~ 18. "Tip pooling" means when two or more tipped employees agree to pool their tips and split them as agreed upon.

~~17.~~ 19. "Tipped employee" means any service employee in an occupation in which the employee customarily and regularly receives more than thirty dollars a month in tips.

20. "Total annualized compensation" means commissions, nondiscretionary bonuses, and other nondiscretionary compensation earned on a basis of a fifty-two-week period, but does not include board, lodging, or other employer-provided facilities, payments for medical insurance or life insurance, or contributions to a retirement plan or other fringe benefits.

~~18.~~ 21. "Waiting to be engaged" means when employees are on call and not required to remain on the employer’s premises, but are required to respond to a beeper or leave word at home or the employer’s business where they may be reached. Employees are not considered to be working while in this status.

~~19.~~ 22. "Week" means any consecutive seven-day period established by the employer.

History: Effective May 1, 1994; amended effective March 1, 1998; October 1, 2012.
General Authority: NDCC 28-32-02(1), 34-06-04
Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12

46-02-07-02. Standards that apply.

1. The North Dakota minimum wage is set forth in North Dakota Century Code section 34-06-22.

   The following are exempt from minimum wage and working conditions provided in this chapter:

   a. Employees of nonprofit camps that are directly youth-related and intended for educational purposes.

   b. A guide, cook, or camp-tender for a hunting or fishing guide service.

   c. Golf course caddies.

   d. Any person in a program for youthful or first-time offenders designed as an alternative to incarceration if the person:

      (1) Voluntarily enters into the program for personal benefit;

      (2) Does not displace regular employees or infringe on the employment opportunities of others;

      (3) Is under the supervision or control of a court; and

      (4) Performs the work without contemplation of pay.

   e. Prison or jail inmates who do work for the prison, jail, institution, or other areas directly associated with the incarceration program. The work must be performed for the prison, jail, institution, state, or a political subdivision.

   f. Actors or extras for a motion picture.

   g. Any person working on a casual basis for less than twenty hours per week for less than three consecutive weeks in domestic service employment providing babysitting services.

   h. Volunteers as described in this subdivision:

      (1) Individuals who donate their time and services, usually on a part-time basis, including public service, humanitarian

objectives, religious, fraternal, nonprofit, and charitable organizations, not as employees and without contemplation of pay.

(2) Individuals who provide services to hospitals or nursing homes to provide support and assistance to families and patients.

(3) Regular employees of religious, nonprofit, or charitable organizations may volunteer their services for activities outside of their normal work duties.

(4) Residents or patients of shelters, foster care, or other such related establishments may volunteer their services as long as regular employees are not displaced.

i. Student trainees meeting the following six criteria:

(1) The training is similar to that in a vocational school.

(2) The training is clearly for the benefit of the trainee.

(3) The trainee does not displace regular employees.

(4) The employer derives no immediate benefit.

(5) The trainee is not entitled to a job.

(6) The trainee is not entitled to wages.

2. The commissioner may issue subminimum wages for students enrolled in vocational education or related programs as long as the wage is not below eighty-five percent of the current state minimum wage.

The process for granting subminimum wages for students includes:

a. The student must complete the application for subminimum wage certificate for vocational education students (SFN 51370). The application (SFN 51370) includes: the employee's name, address, and signature; the employer's name, type of business, address, and signature; a description of the job; the pay rate; the vocational education instructor's signature.

b. Upon receipt of the application the commissioner may issue a license to pay a subminimum wage to the employee for not more than one year.

3. The process for granting subminimum wages to individuals with disabilities in accordance with North Dakota Century Code section 34-06-15 includes:

   a. The disabled worker must complete the application for subminimum wage certificate for individuals with disabilities (SFN 51371). The application (SFN 51371) includes: the employee's name, address, and signature; the employer's name, type of business, address, and signature; a description of the job; the prevailing wage; the proposed pay rate; and an analysis of the employee's productive capacity. A physician's signed verification of the disability in relationship to the job duties or existing supporting evidence of the disability must be provided.

   b. In order to be paid less than the minimum wage, documentation of the employee's commensurate wage rate must be provided to the commissioner and maintained by the employer. Commensurate wages are determined by assessing nondisabled worker productivity, the prevailing wage rate for the same or similar work, and an evaluation of the worker's own efficiency.

   c. Upon receipt of the application and documentation the commissioner may issue a license to pay a subminimum wage to the employee for not more than one year.

   d. The worker's commensurate wage rate must be reevaluated by the employer every six months and adjusted accordingly; the employer must maintain all documentation.

   The commissioner may issue a special license to pay less than the minimum wage to nonprofit community rehabilitation programs for the handicapped under North Dakota Century Code section 34-06-15. Those programs must conduct a recognized program for rehabilitation for handicapped workers or provide paid employment for such workers or other occupational rehabilitative activity of an educational or learning nature. Special licenses to these programs may be issued after the commissioner receives a copy of the application and license from the commensurate federal program for employment of disabled workers under special certificates.

4. Overtime pay must be paid at one and one-half times the regular rate of pay to any employee for hours worked in excess of forty hours in any one week. Paid holidays, paid time off, or sick leave are not counted in computing overtime hours. Overtime is computed on a weekly basis regardless of the length of the pay period. Hours worked may not be averaged over the pay period or used to offset shorter weeks. Employees working more than one job under the control of the same employer must have all hours worked counted toward overtime. Individuals employed as drivers by taxicab companies must

be compensated at one and one-half times the regular rate of pay for all hours worked in excess of fifty hours in any one week. Hospitals and residential care establishments may adopt, by agreement with their employees, a fourteen-day overtime period in lieu of the usual seven-day workweek, if the employees are paid at least time and one-half their regular rate for hours worked over eight in a day or eighty in a fourteen-day work period. The following types of employment are exempt from the overtime provisions of this subsection:

a. Any employee employed in a bona fide executive, administrative, or professional capacity.

b. Any employee engaged in an agricultural occupation.

c. Any employee spending at least fifty-one percent of the employee's work time providing direct care to clients of a shelter, foster care, or other such related establishment whose primary responsibilities are to provide temporary shelter, crisis intervention, prevention, education, and fellowship.

d. Any employee employed in domestic service who resides in the household in which employed.

e. A straight commission salesperson in retail automobile, trailer, boat, aircraft, truck, or farm implement dealerships unless that salesperson is required to be on the premises for more than forty hours per week.

f. Computer professionals exercising discretion and independent judgment when designing, developing, creating, analyzing, testing, or modifying computer programs or who are paid hourly at a rate of at least twenty-seven dollars and sixty-three cents.

g. Any employee who is customarily and regularly engaged away from the employer's premises for the purpose of making sales or taking orders. Work unrelated to outside sales may not exceed twenty percent of the hours worked in the week for the exemption to apply.

h. Mechanics paid on a commission basis off a flat rate schedule.

i. An employee of a retail establishment if the employee's regular rate of pay exceeds 1.5 times the minimum hourly rate applicable if more than half of the employee's compensation for a period of not less than one month is derived from commission on goods or services sold.

j. Any employee employed as an announcer, news editor, or chief engineer by a radio or television station.

k. Artistic professions which are original and creative in nature or where the work is dependent upon the invention, imagination, or talent of the employee, such as: editors, columnists, critics, publishers, cartoonists, graphic artists, musicians, composers, conductors, soloists, novelists, writers, and actors.

l. Motor carrier: Any employee exempted by section 13(b)(1), (2), and (3) of the Fair Labor Standards Act [29 U.S.C. 213(b)(1), (2), and (3)] from section 7 of the Fair Labor Standards Act [29 U.S.C. 207], as applied to covered employees of motor common, contract, and private carriers specified by the Motor Carriers Act [49 U.S.C. 3102].

m. Teachers, instructors, tutors, and lecturers engaged in teaching in a school or educational system.

n. A highly compensated employee.

5. A minimum thirty-minute meal period must be provided in each shift exceeding five hours when there are two or more employees on duty. Employees may waive their right to a meal period upon agreement with the employer. Employees do not have to be paid for meal periods if they are completely relieved of their duties and the meal period is ordinarily thirty minutes in length. The employee is not completely relieved if required to perform any duties during the meal period. Collectively bargained agreements will prevail over this provision.

6. Attendance at lectures, meetings, training programs, and similar activities need not be counted as working time if all the following four criteria are met:

   a. Attendance is outside of the employee's regular working hours.

   b. Attendance is in fact voluntary.

   c. The course, lecture, or meeting is not directly related to the employee's job.

   d. The employee does not perform any productive work during such attendance.

   Training or education mandated by the state, federal government, or any political subdivision for a specific occupation need not be counted as work time.

7. Ordinary travel from home to work need not be counted as work time. Special and unusual one-day assignments performed for the employer's benefit and at the employer's request is work time for the employee regardless of driver or passenger status. Travel away from

home is work time when performed during the employee's regular working hours. Time spent traveling on nonworking days during regular working hours is work time. The time spent as a passenger on an airplane, train, bus, or automobile after normal working hours is not work time. The driver of a vehicle is working at anytime when required to travel by the employer. Travel time from jobsite to jobsite, or from office to jobsite, is work time to be compensated. Activities which are merely incidental use of an employer-provided vehicle for commuting home to work are not considered part of the employee's principal activity and therefore need not be counted as work time.

8. Standby time on the employer's premises, or "on call" as in an engaged to wait manner is work time to be compensated. Waiting to be engaged is not required to be compensated as work time.

9. If an employee is required to be on duty for twenty-four hours or more, the employer and the employee may agree to exclude bona fide meal periods and bona fide regularly scheduled sleeping periods of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleep. If the sleeping period is more than eight hours, only eight hours will be deducted from hours worked. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable night's sleep, the entire period must be counted as work time.

10. Recordkeeping: Every employer must furnish to an employee each pay period a check stub or pay voucher that indicates hours worked, the rate of pay, required state and federal deductions, and authorized deductions.

    Time clocks: Time clocks are not required. If used, the employer may round the time to the nearest five minutes or quarter hour using the total minutes for the day as long as the employee over a period of time is paid for all the time the employee has actually worked.

    Employees who voluntarily clock in before their regular starting time or remain after closing time do not have to be compensated provided that no work is performed.

11. An employer may require an employee to purchase uniforms if the cost of such uniforms does not bring that employee's wage below the hourly minimum wage for all hours worked during that pay period.

12. Paid time off includes annual leave, earned time, personal days, or any other provisions of the employment relationship intended to provide compensation as vacation. Provisions where employees earn time off

and the employees can use the days for any purpose, are paid time off unless separate arrangements are made for sick leave.

Paid time off, once earned or awarded, is considered wages upon separation from employment. If the paid time off is available for use at the time of separation from employment, the employer must pay the employee for that time at the regular rate of pay earned by the employee prior to separation.

No employment contract or policy may provide for forfeiture of earned paid time off upon separation. An employment contract or policy may require an employee to take vacation by a certain date or lose the vacation (use it or lose it), provided that the employee is given a reasonable opportunity to take the vacation. The employer must demonstrate that the employee had notice of such contract or policy provision.

13. The reasonable value not exceeding the employer's actual cost of board, lodging, and other facilities customarily furnished by the employer for the employee's benefit may be treated as part of the wages, up to a maximum of eighteen dollars per day, if agreed to by a written agreement and if the employee's acceptance of facilities is in fact voluntary.

14. The common law test provided in subdivisions a and b of subsection 5 of section 27-02-14-01 will be used to determine whether or not an individual may be considered an employee or an independent contractor.

15. Earned bonus: An earned bonus is an amount paid in addition to a salary, wage, or commission. An earned bonus is compensable when an employee performs the requirements set forth in a contract or an agreement between the parties.

    Earned commission: A commission is a fee or percentage given for compensation to an individual for completion of a sale, service, or transaction. Upon separation from employment, the past practices, policies, and entire employment relationship will be used to determine if the commission is earned and compensable.

16. The department will use the past practices, policies, and entire employment relationship in wage claim determinations.

History: Effective May 1, 1994; amended effective October 1, 1996; September 1, 1997; March 1, 1998; July 24, 2007; October 1, 2012.
General Authority: NDCC 28-32-02(1), 34-06-04
Law Implemented: NDCC 34-06-03, 34-06-09, 34-06-11, 34-06-12, 34-06-15

CHAPTER 46-03-01
CALCULATION OF A REGULAR RATE AND OVERTIME

46-03-01-01. Formulas for determining regular rate and overtime.

1. Determining overtime from an hourly rate:

Hourly rate x 1.5	=	Overtime hourly rate of pay		
Overtime hourly rate of pay	x	Number of hours worked in excess of 40	=	Amount of overtime due

2. Determining hourly rate and overtime from monthly salary:

$$\frac{\text{Monthly salary x 12}}{52} = \text{Weekly salary}$$

$$\frac{\text{Weekly salary}}{\text{Total hours worked during that week}} = \text{Rate per hour}$$

To calculate overtime from this:

Rate per hour x 1/2	x	Number of hours worked in excess of 40	=	Amount of overtime due

3. Determining hourly rate and overtime for retail employees paid principally from commissions:

$$\frac{\text{Total compensation for one week}}{\text{Total hours worked for that same week}} = \text{Regular rate of pay}$$

4. Weighted average method of overtime: When an employee performs two jobs for the same employer, with each job having a different rate of pay, the method of computing overtime is as follows:

Job 1:	Rate of pay	x	Number of hours	=	Compensation	
Job 2:	Rate of pay	x	Number of hours / Total hours	=	Compensation / Total compensation	

$$\frac{\text{Total compensation}}{\text{Total hours}} = \text{Average per hour}$$

$$\frac{\text{Average per hour}}{2} = \text{Rate of overtime}$$

The rate of overtime multiplied by the number of overtime hours (hours in excess of 40) is the total overtime due.

5. Determining overtime from regular rate and overtime from day rates and job rates:

   If the employee is paid a flat sum for a day's work or for doing a particular job, without regard to the number of hours worked in the day or at the job, and if the employee receives no other form of compensation for services, the employee's regular rate is determined by totaling all the sums received at such day rates or job rates in the workweek and dividing by the total hours actually worked. The employee is then entitled to extra half-time pay at the rate for all hours worked in excess of forty in the workweek.

History: Effective December 1, 1992; amended effective March 1, 1998; October 1, 2012.
General Authority: NDCC 28-32-02(1), 34-06-04
Law Implemented: NDCC 34-06-11, 34-06-12

TITLE 54

BOARD OF NURSING

OCTOBER 2012

CHAPTER 54-02-05

54-02-05-03. Renewal fees. The nonrefundable renewal fee for the registered nurse license will be ~~ninety~~ one hundred twenty dollars. The nonrefundable renewal fee for the practical nurse license will be ~~eighty~~ one hundred ten dollars.

History: Amended effective November 1, 1979; July 1, 1987; November 1, 1990; June 1, 2001; June 1, 2002; October 1, 2012.
General Authority: NDCC ~~43-12.1-08(2)(d)~~ 43-12.1-08(2)(d)(k)
Law Implemented: NDCC 43-12.1-10(1)

CHAPTER 54-02-06

54-02-06-01. Application and fee for license by endorsement. Applicants for license by endorsement must meet board requirements, including the following:

1. Submit a completed application and submit to a criminal history record check according to chapter 54-02-12;

2. Pay the nonrefundable endorsement fee of one hundred ~~ten~~ forty dollars;

3. Completed a state-approved nursing education program which meets or exceeds those requirements outlined in article 54-03.2; and

4. Has nursing practice to demonstrate continued competency which meets or exceeds four hundred hours within the preceding four years or as otherwise approved by the board.

A licensee from another jurisdiction that does not meet the practice hours must meet the requirements in section 54-02-05-05, relating to nonpracticing nurses.

History: Amended effective November 1, 1979; March 1, 1986; March 1, 1992; May 1, 1996; February 1, 1998; June 1, 2001; June 1, 2002; April 1, 2004; July 1, 2008; April 1, 2011; October 1, 2012.
General Authority: NDCC 12-60-24.2(o), ~~43-12.1-08~~ 43-12.1-08(2)(d)(k)
Law Implemented: NDCC 43-12.1-09(2)(b)

TITLE 61

STATE BOARD OF PHARMACY

OCTOBER 2012

CHAPTER 61-02-07.1

61-02-07.1-03. Educational preparation.

1. To be eligible to be registered by the board of pharmacy as a pharmacy technician the person must have completed one of the following requirements:

   a. Successful completion of an American society of health systems pharmacists accredited academic program ~~approved by the board of pharmacy~~;

   b. An American society of health systems pharmacists accredited on-the-job training program ~~that is directed by the pharmacist-in-charge and approved by the board of pharmacy; or~~.

   ~~c.~~ ~~Employment in a pharmacy as clerical personnel or pharmacy technician for at least one year. This provision will expire one year after the approval of this rule and will require a request in writing by a pharmacist-in-charge of a North Dakota pharmacy.~~

2. ~~A record of pharmacy technician education must be maintained by the pharmacist-in-charge or designated staff pharmacist which contains~~ Technician certfication:

   a. ~~The name of the pharmacy technician receiving the education;~~ An applicant for registration as a pharmacy technician must have obtained certification by a national certification body approved by the board of pharmacy.

   b. ~~The date of the educational program;~~ A technician registered after August 1, 1995, must obtain and maintain certification by a national certification body approved by the board of pharmacy.

c. ~~A general description of the topic covered; and~~ A registered technician who does not hold certification on April 1, 2011, will have until March 1, 2014, to obtain that certification.

d. ~~The name of the presenter if not conducted by the pharmacist-in-charge.~~ A copy of a current certification certificate will serve as proof of the technician's continuing education requirement upon renewal or a continuing education audit.

e. The pharmacy technician certification board is an approved certification body.

History: Effective October 1, 1993; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, ~~43-15-10(12)(14)~~ 43-15-10(12)(14)(19)
Law Implemented: NDCC ~~28-32-03, 43-15-10(12)(14)~~ 43-15-10(12)(14)(19)

CHAPTER 61-04-06

61-04-06-02. Requirements of a prescription order for noncontrolled drugs. The patient hard copy prescription form for noncontrolled drugs must contain the following:

1. The name and address of the patient;
2. The date of issuance;
3. The name of the drug;
4. The quantity;
5. The strength;
6. Adequate directions for use;
7. The prescriber's name, either printed or stamped;
8. The prescriber's indication of refill authorization;
9. A reminder legend in at least six-point uppercase print stating, "In order to require that a brand name product be dispensed, the practitioner must hand write the words 'brand medically necessary'"; and
10. The signature of the prescriber, unless an oral or telephoned prescription.

History: Effective October 1, 1993; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14)
Law Implemented: NDCC ~~28-32-03,~~ 43-15-10(9)(12)(14)

61-04-06-03. Requirements of prescription order for controlled drugs. The patient hard copy prescription form for controlled drugs must contain the following:

1. The name address of the patient;
2. The date of issuance;
3. The name of the drug;
4. The quantity;
5. The strength;
6. Adequate directions for use;

7. The prescriber’s name, either printed or stamped;

8. The prescriber’s indication of refill authorization;

9. A reminder legend in at least six-point uppercase print stating, "In order to require that a brand name product be dispensed, the practitioner must hand write the words ’brand medically necessary’";

10. The DEA number of the prescriber; and

11. The signature of the prescriber.

History: Effective October 1, 1993; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9)(12)(14)
Law Implemented: NDCC ~~28-32-03,~~ 43-15-10(9)(12)(14)

CHAPTER 61-05-01
RADIOPHARMACEUTICAL SERVICES

61-05-01-01. Purpose and scope. It is unlawful to receive, possess, or transfer radioactive drugs, except in accordance with North Dakota Century Code chapter 43-15, this article, and the North Dakota radiological health rules in article 33-10. It is also unlawful for any person to provide radiopharmaceutical services unless that person is a pharmacist meeting the qualifications of section 61-05-01-04, or a person acting under the direct supervision of a pharmacist meeting those qualifications and acting in accordance with North Dakota Century Code chapter 43-15 ~~and~~, state board of pharmacy regulations, and ~~regulations of~~ the North Dakota ~~department of health~~ radiological health rules in article 33-10, with the exception of a medical practitioner, who is listed as an authorized user on a radioactive materials license, for administration to the practitioner's patients. No person may receive, acquire, possess, use, transfer, or dispose of any radioactive material except in accordance with the conditions of ~~any~~ a radioactive material license on which the person is an authorized user, as required by the ~~North Dakota~~ state department of health pursuant to ~~North Dakota Century Code chapters 23-20 and 23-20.1~~ article 33-10. The requirements of this chapter are in addition to, and not in substitution for, other applicable provisions of regulations of the state board of pharmacy and the ~~North Dakota~~ state department of health.

History: Effective August 1, 1983; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36
Law Implemented: NDCC ~~28-32-02,~~ 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-02. Definitions.

1. "Authentication of product history" includes identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.

2. "Internal test assessment" includes conducting those tests of a quality assurance necessary to ensure the integrity of the test.

3. "Radiopharmaceutical quality assurance" includes the performance of appropriate chemical, biological, and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.

4. "Radiopharmaceutical service" includes the compounding, dispensing, labeling, and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.

History: Effective August 1, 1983.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36
Law Implemented: NDCC ~~28-32-02,~~ 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-03. General requirements for nuclear pharmacies providing radiopharmaceutical services.

1. A nuclear pharmacy providing radiopharmaceutical services shall only be managed by a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of the nuclear pharmacist. The nuclear pharmacist is responsible for all operations of the licensed area and shall be ~~in personal attendance~~ physically present at all times that the pharmacy is open for business. In emergency situations, in the nuclear pharmacist's absence, the nuclear pharmacist may designate one or more other qualified licensed professionals, who are authorized users, listed by name, on a radioactive materials license, to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals, only if the single dose is already prepared by a qualified nuclear pharmacist, for the immediate emergency and must document such withdrawals in the control system.

2. ~~Pharmacies~~ Nuclear pharmacies providing radiopharmaceuticals shall have adequate space, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state. The area shall be separate from the pharmacy areas for nonradioactive drugs and shall be secured from unauthorized personnel. All nuclear pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product

decay area, occupying at least twenty-five square feet [2.32 square meters] of space, separate from and exclusive of the hot laboratory, compounding, dispensing, quality assurance, and office area. A nuclear pharmacy handling radioactive drugs exclusively may be exempted from the general space requirements for pharmacies by obtaining a waiver from the state board of pharmacy. Detailed floor plans shall be submitted to the state board of pharmacy before approval of the license.

3. ~~Pharmacies~~ Nuclear pharmacies providing radiopharmaceutical services shall only dispense radiopharmaceuticals which comply with acceptable standards of radiopharmaceutical quality assurance.

4. ~~Pharmacies~~ Nuclear pharmacies providing radiopharmaceutical services shall maintain records of acquisition and disposition of all radioactive drugs and byproduct material for the duration of the license.

5. ~~Pharmacies~~ Nuclear pharmacies providing radiopharmaceutical services shall comply with all applicable laws and regulations of federal and state agencies, including those laws and regulations governing nonradioactive drugs.

6. Radioactive drugs are to be dispensed only upon a ~~prescription~~ request from a ~~medical practitioner~~ licensee authorized to possess, use, and administer radiopharmaceuticals. A pharmacist providing radiopharmaceutical services may transfer to authorized persons radioactive materials not intended for drug use, in accordance with North Dakota rules and regulations pertaining to radiation control.

7. A ~~prescription for a~~ radiopharmaceutical ~~shall be for an individual patient. A pharmacy may furnish radiopharmaceuticals for office use only to medical practitioners authorized to possess, use, and administer radiopharmaceuticals for an individual patient~~ may be provided only to a facility licensed under article 33-10, with an authorized user for the radioactive drug requested. A nuclear pharmacy must have on file a copy of the current radioactive materials license for the licensed facility requesting any radioactive drug before the radioactive drug is permitted to be dispensed to that facility. The radioactive drug must be delivered to the authorized address in the license for receipt, logging in, testing for contamination, and determining the current activity and then the dose is available to be administered to a patient.

8. In addition to any labeling requirements of the state board of pharmacy for nonradioactive drugs, the immediate outer container of a radioactive drug to be dispensed shall also be labeled with:

~~(a)~~ a. ~~the~~ The standard radiation symbol;

~~(b)~~ b. ~~the~~ The words "Caution–Radioactive Material";

~~(c)~~ c. ~~the~~ The radionuclide;

~~(d)~~ d. ~~the~~ The chemical form;

~~(e)~~ e. ~~the~~ The amount of radioactive material contained, in millicuries or microcuries;

~~(f)~~ f. ~~if~~ If a liquid, the volume in ~~cubic centimeters~~ milliliters; and

~~(g)~~ g. ~~the~~ The requested calibration time for the amount of radioactivity contained.

9. The immediate container shall be labeled with:

~~(a)~~ a. ~~the~~ The standard radiation symbol;

~~(b)~~ b. ~~the~~ The words "Caution–Radioactive Material";

~~(c)~~ c. ~~the~~ The name, address, and telephone number of the pharmacy; and

~~(d)~~ d. ~~the~~ The prescription number.

10. The amount of radioactivity shall be determined by dose calibrator or other appropriate radiometric methods for each individual dose immediately prior to dispensing.

11. ~~Pharmacies~~ Nuclear pharmacies may redistribute national food and drug administration approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.

History: Effective August 1, 1983; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36
Law Implemented: NDCC ~~28-32-02,~~ 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-04. General requirements for nuclear pharmacists to manage a nuclear pharmacy providing radiopharmaceutical services. A qualified nuclear pharmacist shall:

1. Meet minimal standards of training for medical uses of radioactive material.

2. ~~Be a currently licensed pharmacist~~ Hold a current, active license to practice pharmacy in this state.

3. Have ~~received~~ completed a minimum of ~~ninety~~ seven hundred contact hours in a structured educational program consisting of didactic instruction in nuclear pharmacy ~~from an accredited college of pharmacy.~~ and clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program with emphasis in the following areas:

   a. Radiation physics and instrumentation.

   b. Radiation protection.

   c. Mathematics pertaining to the use and measurement of readioactivity.

   d. Chemistry of byproduct material for medical use.

   e. Radiation biology.

   f. Shipping, receiving, and performing related radiation surveys.

   g. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha-emitting or beta-emitting radionuclides.

   h. Calculating, assaying, and safely preparing dosages for patients or human research subjects.

   i. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures.

4. ~~Attain a minimum of one hundred sixty hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an accredited college of pharmacy.~~ Obtain written attestation, signed by an authorized nuclear pharmacist stating that the pharmacist has completed the requirements of this section and has achieved a level of competence sufficient to function independently as an authorized nuclear pharmacist and submit that to the state board of pharmacy.

5. Submit ~~an affidavit of experience and training~~ evidence to the state board of pharmacy that the pharmacist is certified by a specialty board whose certification has been recognized under 10 CFR 35.55(a).

History: Effective August 1, 1983; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36
Law Implemented: NDCC ~~28-32-02,~~ 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

61-05-01-05. Library. Each nuclear pharmacy providing radiopharmaceutical services shall have current editions or revisions of:

1. United States Pharmacopoeia National Formulary, with supplements.

2. ~~National Formulary, with supplements~~ Current issues of the Journal of Nuclear Medicine or online access.

3. State laws and regulations relating to pharmacy.

4. State and federal regulations governing the use of applicable radioactive materials, including North Dakota radiological health rules, article 33-10.

5. ~~United States public health service, Radiological Health Handbook~~ Nuclear Medicine: The Requisites - by Thrall and Ziessman.

6. ~~Nuclear Medicine - by Blahd~~ Principles and Practice of Nuclear Medicine - by Early and Sodee.

7. ~~Medical Radiation Physical - by Hendree~~ Nuclear Pharmacy - by Chilton and Witcofski.

8. ~~Medical Radiation Biology - by Pizzarello and Wetcofske~~ Radiopharmaceuticals in Nuclear Pharmacy and Nuclear Medicine - by Kowalski and Phelan.

9. ~~P.D.R. for Radiology and Nuclear Medicine.~~

10. ~~Principles of Radiosotope Methodology - by Chase and Rabinwotz.~~

11. ~~Current issues of Journal of Nuclear Medicine.~~

The state board of pharmacy recognizes that the library needed will depend on the type of radiopharmaceutical services offered. Variations in the required library may be granted by the state board of pharmacy.

History: Effective August 1, 1983; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36
Law Implemented: NDCC ~~28-32-02,~~ 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13),43-15-10(14), 43-15-36

61-05-01-06. Minimum equipment requirements. Each pharmacy providing radiopharmaceutical services shall have the following equipment:

1. ~~Radiation laboratory~~ Area radiation monitor ~~(a~~ which is stationary ~~one~~ and away from other activity~~)~~.
2. ~~Gamma~~ Dose calibrator and well counter.
3. Portable ~~ionization chamber (to determine~~ survey meter, capable of measuring up to two thousand mR/hr for determining contamination and for other physic procedures~~)~~.
4. Sufficient quantity of lead bricks, lead plates, leaded glass of high density, and leaded or tungsten syringe shields.
5. Refrigerator with freezer with temperature-monitoring capabilities.
6. Class A prescription balance or balance of greater sensitivity.
7. ~~Single channel~~ Single-channel or multichannel scintillation counter.
8. ~~Pyrogen oven~~ Sink with hot and cold running water.
9. ~~Portable radiation survey meter~~ Wipe test counter capable of detecting 0.005 microcuries of the radionuclides in question.
10. Chromatographic equipment.
11. ~~Fumer~~ Annually calibrated fume hood, if handling volatile radioactive materials.
12. Chemical exhaust hood, if handling large quantities of chemicals.
13. Electronic balance or class A prescription balance.
14. Lighted microscope or hemocytometer, or both.
15. ~~Auto clave - for steam sterilization~~ ISO class 5 laminar flow-dispensing hood.

16. ~~Dry heat oven (for heat sterilization and to dry glassware)~~ Forceps or tongs for remote handling of material.

17. Hotplate or heat block, or both.

18. ~~Lead shielded water bath~~ Class II biosafety cabinet for handling blood samples for labeling.

19. Glassware.

20. Other equipment necessary for radiopharmaceutical services provided as required by the state board of pharmacy.

The state board of pharmacy recognizes that the equipment needed will depend on the type of radiopharmaceutical services offered. Variations for required equipment may be granted by the state board of pharmacy.

History: Effective August 1, 1983; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36
Law Implemented: NDCC ~~28-32-02,~~ 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(13), 43-15-10(14), 43-15-36

CHAPTER 61-07-01
HOSPITAL PHARMACY

61-07-01-04. Personnel.

1. **Director.** Each hospital pharmacy must be directed by a pharmacist-in-charge, hereinafter referred to as the director of pharmacy, who is licensed to engage in the practice of pharmacy in this state, and who is knowledgeable in and thoroughly familiar with the specialized functions of hospital pharmacies. The director of pharmacy is responsible for all activities of the hospital pharmacy, and for meeting the requirements of the North Dakota pharmacy practice act and this chapter. Contractual providers of pharmacy services shall meet the same requirements as director of pharmacy services.

2. **Supportive personnel.** The director of a hospital pharmacy must be assisted by a sufficient number of additional pharmacists and ancillary personnel as may be required to operate such pharmacy competently, safely, and adequately to meet the needs of the patients of the hospital.

   a. Pharmacy technicians may be employed provided they have been approved by the director. The director shall develop and implement written policies and procedures to specify the duties to be performed by such technical personnel. These policies and procedures shall, at a minimum, specify that ancillary technical personnel are properly or adequately supervised by a registered pharmacist and that ancillary technical personnel are not assigned duties which may be performed only by pharmacists.

   b. Secretarial support should be provided as required to assist with recordkeeping, report submission, and other administrative duties.

3. **Supervision.** All of the activities and operations of each hospital pharmacy must be personally and directly supervised by its director or pharmacist's designee. All functions and activities of ancillary personnel must be personally and directly supervised by a sufficient number of registered pharmacists to ensure that all such functions and activities are performed competently, safely, and without risk of harm to patients.

History: Effective April 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-07-01-06. Physical requirements.

1. **Area**. A hospital pharmacy shall have within the hospital it services, sufficient floor space allocated to it to ensure that drugs are prepared in sanitary, well-lighted, and enclosed places, and which meet the other requirements of this section.

2. **Equipment and materials.** Each hospital pharmacy shall have sufficient equipment and physical facilities for proper compounding, dispensing, and storage of drugs, including parenteral preparations, and, as a minimum, access to the references for the following subjects:

   a. Drug interactions.

   b. Drug compatibility.

   c. Poison and antidote information.

   d. Chemistry:

      (1) Organic;

      (2) Pharmaceutical; and

      (3) Biological.

   e. Toxicology.

   f. Pharmacology.

   g. Bacteriology.

   h. Sterilization and disinfection.

   i. Pharmacy technology.

   j. Patient counseling.

k. Rational therapy.

l. Pathology.

m. Current United States Pharmacopeia and National Formulary dispensing information.

n. Current state and federal regulations applicable to controlled substances.

The technical equipment required by section 61-02-01-03 may be either at the hospital pharmacy or the community pharmacy servicing the hospital pharmacy.

3. **Storage.** All drugs must be stored in designated areas within the hospital pharmacy which are sufficient to ensure proper sanitation, temperature, light, ventilation, moisture control, segregation, and security.

4. **Alcohol and flammables.** Alcohol and flammables must be stored in areas that shall meet, at a minimum, basic local building code requirements for the storage of volatiles and such other laws, ordinances, regulations as may apply.

5. **Unattended areas.** In the absence of authorized personnel, and whenever any area of a hospital pharmacy is not under the personal and direct supervision of authorized personnel, such area must be locked.

6. **Security.** All areas occupied by a hospital pharmacy must be capable of being locked by key or combination, so as to prevent access by unauthorized personnel. The director shall designate, in writing, by title and specific area, those persons who shall have access to particular areas within the pharmacy.

History: Effective April 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-15-10(9), 43-15-10(11), 43-15-10(12), 43-15-10(14)

61-07-01-07. Drug distribution and control.

1. **General**. The director of pharmacy services shall establish written procedures for the safe and efficient distribution of pharmaceutical products. An annual updated copy of such procedures must be on hand for inspections.

2. **Responsibility.** The director is responsible for the safe and efficient distribution of, control of, and accountability for drugs. The other professional staff of the hospital shall cooperate with the director

in meeting this responsibility and in ordering, administering, and accounting for pharmaceutical materials so as to achieve this purpose. Accordingly, the director is responsible for, at a minimum, the following:

a. Preparation and sterilization of parenteral medications manufactured within the hospital.

b. Admixture of parenteral products, including education and training of nursing personnel concerning incompatibility and provision of proper incompatibility information when the admixture of parenteral products is not accomplished within the hospital pharmacy.

c. Manufacture of drugs, if applicable.

d. Establishment of specifications for procurement of all materials, including drugs, chemicals, and biologicals, subject to approval of the appropriate committee of the hospital.

e. Participation in development of a formulary for the hospital.

f. Filling and labeling all containers from which drugs are to be administered.

g. Maintaining and making available a sufficient inventory of antidotes and other emergency drugs, both in the pharmacy and inpatient care areas, as well as current antidote information, telephone numbers of regional poison control centers, and other emergency assistance organizations, and such other materials and information as may be deemed necessary by the appropriate committee of the hospital, if any.

h. Records of all transactions of the hospital pharmacy as may be required by applicable law, state and federal, and as may be necessary to maintain accurate control over and accountability for all pharmaceutical materials.

i. Participation in drug usage evaluation activities.

j. Fullest cooperation with teaching or research programs, or both, in the hospital, if any.

k. Implementation of the policies and decisions of the appropriate committees of the hospital.

l. Effective and efficient messenger and delivery service to connect the pharmacy with appropriate parts of the hospital on a regular basis throughout the normal workday of the hospital.

m. Meeting all compliance and other requirements of the North Dakota board of pharmacy rules and laws and this chapter.

3. **Labeling.**

a. For use inside the hospital. All drugs dispensed by a hospital pharmacy, not on an individual prescription, intended for use within the hospital, must be dispensed in appropriate containers and adequately labeled so as to identify, at a minimum, brand name or generic name, strength, quantity, source, and expiration date.

b. For use outside the pharmacy. All drugs dispensed by a hospital pharmacy to patients about to be discharged or to whom it is certain will carry the item dispensed outside of the hospital, in compliance with pharmacy practice act and rules, must be labeled with the following information:

(1) Name, address, and telephone number of the hospital pharmacy.

(2) Date and identifying serial number.

(3) Full name of patient.

(4) Name of drug strength, and number of units.

(5) Directions for use to the patients.

(6) Name of physician prescribing.

(7) Required precautionary information regarding controlled substances.

(8) Such other and further accessory cautionary information as may be required or desirable for proper use and safety to the patient.

c. Drugs added to parenteral admixtures. Whenever any drugs are added to parenteral admixtures, whether within or outside the direct and personal supervision of a pharmacist, such admixtures must be labeled with a distinctive supplementary label indicating the name and the amount of the drug added, date and time of addition and expiration, and name of person so adding.

4. **Discontinued drugs.** The director shall develop and implement policies and procedures to ensure that discontinued and outdated drugs and containers with worn, illegible, or missing labels are returned to the pharmacy for proper disposition or that the director or the

director's designee make proper disposition or dispose of such drugs at the storage site.

5. **Physician's orders.** Drugs may be dispensed from the hospital pharmacy only upon written or verbal orders, direct copies or facsimiles thereof, of authorized physicians. Verbal orders for drugs are accepted only by personnel so designated in accordance with applicable law and regulations governing such acts and in accordance with the approved medical staff rules and regulations.

   a. Authorization. The appropriate committee of the hospital shall designate, from time to time as appropriate, those physicians who are authorized to issue orders to the pharmacy.

   b. Abbreviations. Orders employing abbreviations and chemical symbols may be utilized and filled only if such abbreviations and symbols appear on a published list of accepted abbreviations developed by the appropriate committee of the hospital.

   c. Requirements - Orders for drugs for use by inpatients. Orders for drugs for use by inpatients shall contain, at a minimum: patient name and room number, drug name, strength, directions for use, date, and physician's signature or that of the physician's authorized representative.

   d. Requirements - Orders for drugs for use by outpatients. Orders for drugs for use by outpatients become prescriptions and must meet all requirements of the law.

   e. Pharmacist review. The pharmacist shall review the prescriber's order, or a direct copy thereof, before the initial dose of medication is dispensed (with the exception of emergency orders when time does not permit). In cases when the medication order is written when the pharmacy is "closed" or the pharmacist is otherwise unavailable, the medication order should be reviewed by the pharmacist as soon thereafter as possible, preferably within twenty-four hours.

   f. Signature. A means of identifying the signatures of all practitioners authorized to use the pharmaceutical services, as well as a listing of their drug enforcement administration numbers, must be maintained.

6. **Controlled drug accountability.** The hospital shall establish effective procedures and maintain adequate records regarding use and accountability of controlled substances and such other drugs as the appropriate hospital committee may designate which may specify at least the following:

a. Name of drug.

b. Dose.

c. Physician.

d. Patient.

e. Date and time of administration.

f. Person administering the drug.

7. **Recall.** The director shall develop and implement a recall procedure that can be readily activated to assure the medical staff of the hospital that all drugs included on the recall, whether within or outside the hospital, are returned to the pharmacy for proper disposition.

8. **Suspected adverse drug reactions.** Any and all suspected adverse drug reactions must be reported orally immediately to the ordering physician and in writing to the pharmacy, and to the appropriate committee of the hospital. Appropriate entry on the patient's record must also be made. The director may, at the director's discretion, make further reports of such suspected reactions to the hospital reporting program of the United States food and drug administration, to the manufacturer, and to the United States pharmacopeia.

9. **Records and reports.** The director shall maintain and submit, as appropriate, such records and reports as are required to ensure patient health, safety, and welfare, and, at a minimum, the following:

a. Physician's orders, direct copies, or facsimiles thereof.

b. Controlled drug accountability report.

c. Reports of suspected adverse drug reactions.

d. Inventories of night cabinets and emergency kits.

e. Inventories of the pharmacy.

f. Biennial controlled substances inventories.

g. Alcohol and flammables reports.

h. Such other and further records and reports as may be required by law and this chapter.

10. **Distribution systems.**

a. Floor or ward stock system. In this system, all but the most unusual drug items are stocked on the nursing stations. Drug products which require special control (e.g., antineoplastic agents) are often omitted from floor stock, and are sent to the nursing unit upon receipt of a prescription order for the individual patient. All containers used for floor stock must meet specific labeling requirements as addressed in these rules.

b. Individual prescription order system. In this system, all medications are dispensed by the pharmacist on individual prescription orders.

c. Combination of floor stock and the individual prescription order system. In this system, most drugs are dispensed on an individual prescription basis. The remaining drugs are obtained via limited floor stock.

d. Unit dose. In this system, medications are contained in single unit packages; they are dispensed in as ready-to-administer form as possible, for most medications. All doses will be labeled properly to include name, strength, expiration date, or lot number or control number, or both.

History: Effective April 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-07-01-13. Inspection.

1. **Monthly.** The director of pharmacy shall inspect, no less than once a month, personally or by qualified designee, all matters within the director's jurisdiction and responsibility and make appropriate written records and notations of such inspections. Such inspections shall verify, at a minimum, that:

   a. Drugs are dispensed only by pharmacists.

   b. Ancillary pharmacy personnel are properly directed and supervised.

   c. Disinfectants and drugs for external use are stored separately and apart from drugs for internal use or injection.

   d. Drugs requiring special storage conditions to ensure their stability are properly stored.

   e. Outdated drugs or otherwise unusable drugs have been identified and their distribution and administration prevented. An area must be designated for authorized storage of such drugs prior to their proper disposition.

f. Distribution and administration of controlled substances are properly and adequately documented and reported by both pharmacy and medical personnel.

g. Emergency drugs designated pursuant to subsection 4 of section 61-07-01-05 are adequate and in proper supply both within the pharmacy and at outside storage locations.

h. All necessary and required security and storage standards are met.

i. Metric-apothecaries' weight and measure conversion tables and charts are reasonably available to all medical personnel.

j. All policies and procedures of the director and of appropriate committees of the hospital relevant to pharmacy are followed.

k. The telephone number of the regional poison control information center should be posted by all telephones in the nursing stations where drugs are stored.

2. **Annual.** The board of pharmacy shall inspect, no less than once a year, by one of its members or by its qualified designee, all aspects of the management and operation of all hospital pharmacies in the state, to verify compliance with the law, this chapter, and such other standards as may be appropriate to ensure that the health, safety, and welfare of patients of the hospital serviced by the pharmacy are protected. Written reports of an inspection must be filed with the board and the director. Any discrepancies or deficiencies noted must be corrected within a reasonable time. Written notice of such corrections must be filed with the board. Board recommendations may be questioned by written notice to the executive secretary of the board of pharmacy. Consideration must be given by the board's inspector or designee to giving thirty days' notice of an inspection to the director of the pharmacy to be visited. Consideration must also be given to any recent survey by the joint commission on accreditation of health care organizations.

History: Effective April 1, 1988.
General Authority: NDCC 28-32-02
Law Implemented: NDCC 43-15-10(9), 43-15-10(12), 43-15-10(14)

61-07-01-14. Pharmacist first dose review.

1. A hospital pharmacy must have a pharmacist review all medication order prior to the first dose being administered to the patient. Policies and procedures must be put into place to ensure compliance.

2. Either a pharmacist onsite or the use of hospital telepharmacy services will be sufficient to comply with the requirement.

3. This provision does not apply to the following situations:

   a. When the physician controls the ordering, dispensing, and administration of the drug, such as in the operating room, endoscopy suite, or emergency room.

   b. When time does not permit the pharmacist's review, such as with "stat" orders or when the clinical status of the patient would be significantly compromised by the delay resulting from the pharmacist's review of the order.

4. Each hospital pharmacy must be in compliance with this rule by June 30, 2013.

History: Effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(9), 43-15-10(14)
Law Implemented: NDCC 43-15-10(9), 43-15-10(14)

CHAPTER 61-09-01
PRESCRIPTION DRUG INVENTORY OF AMBULANCE SERVICES

61-09-01-01. Prescription drug safeguard and control policy. Each ambulance service shall adopt a written prescription drug safeguard policy which, as a condition precedent to obtaining prescription drugs for ambulance service purposes, at a minimum, must include the following requirements:

1. All prescription drugs must be obtained from a North Dakota licensed pharmacy ~~or registered pharmacist~~, ~~which may include a hospital pharmacy~~ wholesaler, or authorized prescriber, at the request of the ambulance service's medical director or designee. The prescription drugs must be the property of the pharmacy or ~~pharmacist~~ medical director and not the property of the ambulance service.

2. The initial inventory of prescription drugs must be obtained by an ambulance service only upon the written authorization of the ambulance service's medical director who must be a "practitioner" as defined by subsection 17 of North Dakota Century Code section 43-15-01.

3. The pharmacist-in-charge of the licensed pharmacy ~~or the registered~~, a licensed pharmacist, or the medical director must be responsible for the security and accountability of the prescription drug inventory obtained by an ambulance service.

4. Dispensing or administration of all prescription drugs must be pursuant to a standing order, oral instructions, or prescription of a practitioner.

5. All medications administered must be promptly documented on a ~~written prescription~~ patient care report, ~~signed~~ reviewed by the ~~prescribing practitioner or the advanced life support~~ ambulance service's medical director on a monthly basis either directly or indirectly through a quality assurance process approved by the medical director.

6. ~~All replacement~~ Replenishment of prescription drugs must be requested by a responsible individual. If obtained from a pharmacy, the request must be documented on ~~a written prescription and signed by a practitioner~~ an administration record justifying the order. If obtained by, or on behalf of, the medical director, drugs must be obtained from a North Dakota licensed pharmacy, a wholesaler, or an authorized prescriber.

7. Expired, damaged, or unused prescription drugs must be returned to ~~a~~ the licensed pharmacy ~~or pharmacist. The pharmacist, on a monthly basis, shall either check the drug box or review a perpetual inventory for expired drugs~~ where obtained or disposed of by the medical director or the medical director's designee, according to a written protocol established for this purpose.

8. ~~Replacement of lost~~ Lost, stolen, or misused prescription drugs ~~requires written authorization of~~ must be reported to the ambulance service's medical director or the pharmacy where they were obtained.

9. ~~At the beginning of each shift, ambulance (advanced life support) personnel shall conduct a checklist procedure to verify that the drug boxes contain all the required items and that the controlled substances are intact. The checklist procedure is not complete until it is signed by the individuals responsible for possible use of the drug boxes.~~ The licensed ambulance service must have a process, approved by the ambulance service's medical director, or pharmacist-in-charge where the drugs were obtained that accounts for all schedule II, III, and IV controlled substances, at least daily. The daily accounting of schedule II controlled substances must balance and be documented on a daily log.

10. Controlled substances must be sealed in a double lock secure system. A record separate from the other prescription drugs is to be kept for schedule II controlled substances. ~~Documentation on a duplicate form should include~~ A system approved by the ambulance service's medical director to account for the use and waste of schedule II, III, and IV controlled substances must be used. The system must include:

    a. Patient's name and address (if available);

    b. Medication and strength or amount given and amount wasted (if any);

    c. Date;

    d. Physician's name; and

    e. The signature of the individual administering the controlled substance.

11. Any unused portion of a prescription drug must be ~~returned for disposal or destruction to the emergency room where the patient is being brought for care. The return of the unused prescription drug should be documented in writing at the emergency room by the ambulance personnel and cosigned by a registered pharmacist or registered nurse as a witness~~ disposed of in a manner that it cannot be collected or recovered. The disposal of all controlled substances

must be witnessed and cosigned by another person legally qualified to administer controlled substances.

~~12. When a controlled substance needs replacement, a copy of the completed form with the necessary documentation is to be given to the licensed pharmacy or registered pharmacist, preferably the same facility where the original supply was obtained. This will ensure better control of the dispensing of these controlled substances. A form with serial and unit numbers must create an audit trail to account for all drugs and control sheets dispensed.~~

History: Effective July 1, 1990; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(12), 43-15-10(14)
Law Implemented: NDCC 28-32-03, 43-15-10 (12), 43-15-10 (14)

61-09-01-02. Requirement of pharmacy supplier of ambulance service drugs. The pharmacist-in-charge of the licensed pharmacy or the pharmacist supplying prescription drugs to an ambulance service, prior to supplying said drugs, shall review the written prescription drug safeguard policy of the ambulance service to determine that all of section 61-09-01-01 requirements are contained therein and that the ambulance service is complying with those requirements. No prescription drugs may be supplied to an ambulance service if the requirements of section 61-09-01-01 are not contained in the written prescription drug safeguard policy or if the ambulance service is not in compliance with these requirements.

History: Effective July 1, 1990; amended effective October 1, 2012.
General Authority: NDCC 28-32-02, 43-15-10(12), 43-15-10(14)
Law Implemented: NDCC 28-32-03, 43-15-10(12), 43-15-10(14)

TITLE 69.5

NORTH DAKOTA RACING COMMISSION

OCTOBER 2012

CHAPTER 69.5-01-01

69.5-01-01-01. Definitions. The terms used throughout this title have the same meaning as in North Dakota Century Code chapter 53-06.2, except:

1. "Age" means the age of a horse and shall be reckoned from the first day of January of the year of foaling.

2. "Appaloosa" means a horse registered with the appaloosa horse club.

3. "Applicable horsemen's organization" means the jockey club with respect to thoroughbred horses, the American quarter horse association with respect to quarter horses, the United States trotting association with respect to standard bred horses, the appaloosa horse club with respect to appaloosa horses and the American paint horse association with respect to pinto and paint horses.

4. "Arabian" means a horse registered with the international Arabian horse association, the Arabian horse registry of America, inc., or the Anglo-Arabian horse registry.

5. "Arrears" means all moneys owed by a licensee, including subscriptions, jockey fees, forfeitures, and any default incident to these rules.

6. "Association" means an individual or business entity holding a permit from the commission to conduct racing and pari-mutuel wagering, and an annual license authorizing the specific dates of the annual racing meeting.

7. "Association grounds" means all real property utilized by an association in the conduct of its race meeting, including the track, concessions, stands, offices, barns, stables, employee housing, and parking.

8. "Authorized agent" means a person licensed by the commission as an agent for a horse owner or principal by virtue of a notarized appointment

of agent on a form approved by the commission filed by the owner or principal with the horsemen's bookkeeper authorizing the agent to handle matters pertaining to racing and stabling.

9. "Bleeder" means a horse which hemorrhages from within the respiratory tract during a race or within one hour postrace, or during exercise or within one hour of such exercise.

10. "Bleeder list" means a tabulation of all bleeders to be maintained by the commission.

11. "Chemist" means any official racing chemist designated by the commission.

12. "Claiming race" means one which includes a condition that any horse starting the race may be claimed and purchased by any licensed owner who has started a horse at the current meeting for an amount specified in the conditions for that race by the racing secretary.

13. "Commission" means the North Dakota racing commission.

14. "Contractual concessionaire" means any business or individual dealing in the furnishing, sale, or distribution of materials, supplies, or services to an association.

15. "Day" means a twenty-four-hour period beginning at one minute after twelve a.m. and ending at twelve midnight. Also referred to as a race day.

16. "Dead heat" means the finish of a race by two horses or more at the same time.

17. "Declaration" means the act of withdrawing an entered horse from a race.

18. "Entry" means:

    a. A horse entered for a race; or

    b. Two or more horses entered and joined for the same race for pari-mutuel wagering purposes because of common ties of ownership, lease, or training.

19. "Field or mutuel field" means a group of two or more horses upon which a single bet may be placed. A mutuel field is required when the number of horses starting in a race exceeds the capacity of the track totalizator. The highest numbered horse with the totalizator capacity and all the higher-numbered horses following are then grouped together in the mutuel field.

20. "Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration.

21. "Forfeit" means money due by a licensee because of an error, fault, neglect of duty, breach of contract, or penalty imposed by order of the stewards or the commission.

22. "Furosemide" means 4 Chloro-N-(2 furylmethyl)-5-sulfamoy-lanthanilic acid.

23. "Handicap" means a race in which the weights to be carried by the horses are assigned by the racing secretary or handicapper for the purpose of equalizing the chances of winning for all horses entered.

24. "Horse" means any horse (including and designated as a male, filly, stallion, colt, ridgling, or gelding) registered for racing under the jurisdiction of the commission and which requires a jockey to race.

25. "Hypodermic injection" means any injection into or under the skin or mucosa, including intradermal injection, subcutaneous injection, submucosal injection, intramuscular injection, intravenous injection, intra-arterial injection, intra-articular injection, intrabursal injection, and intraocular (intraconjunctival) injection.

26. "Jockey" means a rider licensed to ride in races as a jockey.

27. "Licensee" means any person or entity holding a license from the commission to engage in racing or related regulated activity.

28. "Maiden" means a horse, which at the time of starting, has never won a race on the flat in a state or country where racing is supervised by a lawfully established racing commission or board and where the races are covered by the racing form or official racing publication, American quarter horse chart books, the appaloosa horse club chart books, the paint horse chart books, and the Arabian horse chart book. A maiden that has been disqualified after finishing first is still a maiden.

29. "Match race" means a race between two horses, the property of two owners, on terms agreed upon by them. The match is void if either of the horses or if either owner dies prior to the running of the race. It remains a match even if money or other award is added to the stakes.

30. "Meeting" means the specified period and dates each year during which an association is authorized to conduct racing by approval of the commission.

31. "Minor" means any person under the age of eighteen.

32. "Month" means a calendar month.

33. "Nominator" means the person in whose name a horse is entered for a race.

34. "Official time" means the official time for a race shall be the period from the time the first horse crosses the timing beam until the first horse crosses the finish line.

35. "Operating costs" includes, for purposes of subsection 6 of section 53-06.2-05 and subsection 6 of section 53-06.2-08 of the North Dakota Century Code, contributions to the breeders', purse, racing promotion, and general funds.

~~35.~~ 36. "Overnight race" means a race for which entries close seventy-two hours, or less, before the time set for the first race of the day on which the race is to be run.

~~36.~~ 37. "Owner" means:

a. A person who holds any title, right, or interest, whole or partial, in a horse; or

b. A lessee of a horse holding an owner's license.

An interest only in the winnings of a horse does not constitute partial ownership.

~~37.~~ 38. "Patron" means a member of the public present on the grounds of a pari-mutuel association during a meeting for the purpose of wagering or to observe racing.

~~38.~~ 39. "Performance" means a schedule of eight races or more per day unless otherwise authorized by the commission.

~~39.~~ 40. "Permit" means an authorization by the commission to an association to conduct horse racing and pari-mutuel wagering at a specified place.

~~40.~~ 41. "Permitholder" means an association holding a commission permit to conduct racing meetings and pari-mutuel wagering.

~~41.~~ 42. "Place":

a. In general, to place means to finish a race in either first, second, or third place.

b. In particular, to place means to finish second in a race.

Example: Win - to place first in the finish.
Place - to place second in the finish.
Show - to place third in the finish.

~~42.~~ 43. "Post position" means the position assigned to the horse in the starting gate of a race.

~~43.~~ 44. "Post time" means the time set for the arrival of all horses in a race at the starting gate.

~~44.~~ 45. "Prize" means the combined total of any cash, premium, trophy, and object of value awarded to the owners of horses according to order of finish in a race.

~~45.~~ 46. "Purse" means the gross cash portion of the prize for which a race is run.

~~46.~~ 47. "Purse race" means a race for money or other prize to which the owners of horses entered do not contribute money toward its purse and for which entries close less than seventy-two hours prior to its running.

~~47.~~ 48. "Quarter horse" means a horse registered with the American quarter horse association.

~~48.~~ 49. "Race" means a running contest between horses ridden or driven by jockeys for a purse, prize, or other reward run at a licensed association in the presence of the stewards of the meeting or such other horse racing contests as may from time to time be authorized by the commission. This includes purse races, overnight races, and stakes races.

~~49.~~ 50. "Recognized meeting" means any meeting with regularly scheduled races for horses on the flat in a jurisdiction having reciprocal relations with this state and a commission for the mutual enforcement of rulings relating to horse racing.

~~50.~~ 51. "Rules" means the rules adopted by the commission to regulate the conduct of horse racing.

~~51.~~ 52. "Schooling" means practice races held using actual racing conditions, but in which no wagering is allowed.

~~52.~~ 53. "Scratch" means the act of withdrawing an entered horse from the race after the closing of overnight entries.

~~53.~~ 54. "Scratch time" means the time set by the association for the closing of applications to withdraw from races of that day.

~~54.~~ 55. "Security area" means the area surrounding the security stall delineated by the commission and controlled by it.

~~55.~~ 56. "Security stall" means the stall within the security barn assigned by the commission to a horse on the bleeder list, or occupancy as a prerequisite for receiving bleeder medication.

~~56.~~ 57. "Specimen" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner prescribed by the commission for the purpose of analysis.

~~57.~~ 58. "Stable name" means a name used by an owner or lessee and registered with the commission.

~~58.~~ 59. "Stakes race" means one in which nominators of the entries contribute to a purse for the winners. A stakes race shall close for entries more than seventy-two hours in advance of its running. A stakes race includes a race for which horses are invited by an association to run for a guaranteed purse of five thousand dollars or more, without payment of stakes.

~~59.~~ 60. "Starter" means a horse in a race when the starting gate doors open in front of it at the moment the official starter dispatches the horses for a race.

~~60.~~ 61. "Stewards" means the duly appointed racing officials or their deputies serving at a licensed horse racing meeting.

~~61.~~ 62. "Subscription" means moneys paid for nomination, entry, eligibility, or starting of a horse in a stakes race.

~~62.~~ 63. "Test level" means the concentration of a foreign substance found in the test sample.

~~63.~~ 64. "Test sample" means any bodily substance including, but not limited to, blood or urine taken from a horse under the supervision of the commission veterinarian or such veterinarian's authorized designee and in such manner as prescribed by the commission for the purpose of analysis.

~~64.~~ 65. "Thoroughbred" means a horse registered with the New York jockey club.

~~65.~~ 66. "Veterinarian" means a veterinarian currently licensed by the state board of veterinary medical examiners and the commission.

~~66.~~ 67. "Weigh in" means presentation of a jockey to the clerk of scales for weighing prior to a race.

~~67.~~ 68. "Weigh out" means presentation of a jockey to the clerk of scales for weighing after a race.

~~68.~~ 69. "Year" means a calendar year.

History: Effective July 1, 1989; amended effective January 1, 2008; October 1, 2012.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10, 53-06.2-10.1
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-08, 53-06.2-10, 53-06.2-10.1

CHAPTER 69.5-01-05
LICENSEES

69.5-01-05-02.1. Mad scramble wager licensing fee. A service provider, offering the mad scramble pool in accordance with subsection 15 of section 69.5-01-08-04, shall pay an additional licensing fee of one and one-quarter percent of each mad scramble wager. The additional licensing fee shall be paid to the commission in monthly payments on or before the last day of the next month succeeding the month in which the licensing fees for the mad scramble pool wagers occurred.

History: Effective October 1, 2012.
General Authority: NDCC 53-06.2-05
Law Implemented: NDCC 53-06.2-05, 53-06.2-08

69.5-01-05-18. Owners - Limited partnership. The following duties and restrictions apply to limited partnerships owning or having any interest in a horse governed by the commission and these rules:

1. A copy of the partnership certificate of authority must be attached to the application filed with the commission. A limited partnership must supply to the commission and the jockey club certified copies of its proof of compliance with filing and registration requirements as required by law.

2. a. The general partners in a limited partnership must be licensed by the commission and so must any member of the limited partnership with a beneficial interest of five percent or more of the limited partnership. It is the responsibility of the limited partnership to ensure that every member of the limited partnership is eligible to be licensed by the commission.

   b. A limited partnership must have on file with the commission, and a copy of which is attached to the registration certificate of each horse in the limited partnership, a notarized designation of the general partner to represent the entire ownership of and be responsible for each horse in the limited partnership. Such responsibility does not include the responsibility of the trainer imposed by subsection 2 of section 69.5-01-05-26 in connection with the condition of the horse, unless the general partner is also the trainer.

3. An authorized agent must be appointed to represent the limited partnership in all matters and be responsible for all stakes, powers of entry, scratches, signing of claims slips, among other obligations. The general partner, or other member, may be the authorized agent.

4. a. The alteration in the structure or percentages of the limited partnership must be promptly reported in writing to the commission, and to the jockey club.

   b. The general partner will be responsible for reporting to the commission any interest in all racing horses in which a licensed member owns an interest.

5. The commission may deny, suspend, or revoke the license of a limited partnership in which a member whose interest is qualified or limited by rights or interests held or controlled by an individual or entity which would be ineligible to be licensed as an owner or to participate regardless of percentage of interest.

6. All members of a limited partnership owning less than five percent must be listed with the commission and the applicable horsemen's organization. All beneficial interests must be listed. Such list must include names, addresses, portion owned, social security number, date of birth, and such other information as the commission may require.

Such list must be supplied to the commission by the limited partnership as required by the commission, and a copy sent to the jockey club. Any limited partner owning less than five percent, need not be licensed and will not have access to the backstretch, paddock area, or to the winner's circle, and may be required to submit additional information as requested by the commission which may assess additional fees for the purpose of criminal history checks or other investigative purposes.

7. a. Licensed owners and licensed trainers must be held jointly and severally responsible for making a full disclosure of the entire ownership of each horse in their care.

   b. Such disclosure must identify in writing all individuals or entities who, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in and to such horse, and those individuals or entities who by virtue of any form of such interest might exercise control over such horse or can benefit from the racing of such horse. The degree and type of such ownership held by each individual person must be designated.

   c. Such disclosure must be made when registering each horse with the racing secretary upon arrival on association grounds, or at time of entry, whichever event occurs first, and must be revised immediately upon any subsequent change in such ownership.

   d. Such disclosure together with all written agreements and affidavits setting out oral agreements, pertaining to the ownership of or rights in and to a horse, must be attached to the registration certificate for such horse and filed with the racing secretary, who is responsible for the care and security of such papers while such horses pertaining thereto are located on association grounds.

   e. Such disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a horse filed with the racing secretary must be available for public inspection as provided by law.

8. The commission or stewards, or both, shall review the ownership of each horse entered to race and ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owners. The commission or stewards may determine the validity for racing purposes of all liens, transfers, and agreements pertaining to ownership of a horse, and may call for adequate evidence of ownership at any time. The commission or stewards may declare ineligible to race any horse, the ownership or control of which is in question.

9. A member of a limited partnership may not have an interest in more than one uncoupled horse in any race except by permission of the stewards. For purposes of this section only, "ownership" must be construed to mean any individual person or entity required to be licensed as an owner pursuant to these rules and, in the instance of a limited partnership, any individual person or other entity possessing at least a five percent beneficial interest provided, however, that when a trainer enters two or more horses in a stakes, handicap, futurity, or other special event under beneficial separate ownerships, the horses, at the request of the association and with the approval of the commission or stewards, may be permitted to race as separate wagering entities.

10. If the race is split in two or more divisions, horses in an "entry" must be seeded in separate divisions insofar as possible but the divisions in which they compete and the post positions must be determined by lot.

11. The horses owned by a limited partnership must run in the name of the general partner with a designated "(LP)" following the name.

History: Effective July 1, 1989.
General Authority: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-10
Law Implemented: NDCC 53-06.2-01, 53-06.2-04, 53-06.2-05, 53-06.2-10

CHAPTER 69.5-01-11

69.5-01-11-02. General licensing requirements.

1. Any site operator, service provider, or totalizator company must be licensed by the commission and approved by the attorney general. Totalizator companies contracting for service within the state and their employees whose principal work address is within the state must be licensed by the commission. Other vendors and their employees may be required to be licensed at the discretion of the commission. Application for a license must include the license fee as prescribed by the commission. Applications for licenses must be in such form as may be prescribed by the commission and must contain such information or other material or evidence as the commission may require. All licenses must be for a period of one year commencing January first and ending December thirty-first of each calendar year. The initial license fee for a service provider is seven thousand five hundred dollars, for a site operator is one thousand dollars, and for a totalizator company is two thousand five hundred dollars. A service provider is required to pay an additional license fee in accordance with section 69.5-01-05-02.1 when offering the mad scramble pool.

2. The application for renewal of license must be made to the commission by such date as may be prescribed by the commission. If the commission has not specifically set application dates for renewal of the class of license, application must be made no later than thirty days prior to the date of expiration of the license. Application for renewal of license must be made in such form as may be prescribed by the commission. Application for license renewal must include the license fee for a service provider, two thousand five hundred dollars; site operator, two hundred fifty dollars; and totalizator company, one thousand five hundred dollars.

3. Approval or disapproval of an application for site operator, service provider, or totalizator company license must include consideration by the commission of the following:

    a. The applicant's general benefit to the state of North Dakota.

    b. The applicant's general benefit to the state's horse racing industry.

    c. The applicant's integrity.

        (1) Individual and corporate conduct and reputation.

        (2) Criminal history.

        (3) Betting and gaming industry conduct and reputation.

d. The applicant's credibility.

(1) Accuracy of feasibility study.

(2) Experience and expertise of the applicant in the industry.

e. Financial stability.

4. A service provider cannot operate without an executed contract with a site operator.

5. The commission may require licensing of any entity or person contracting with or providing services or commodities to any site operator, service provider, or employee licensed by the commission.

History: Effective March 1, 1990; amended effective August 1, 2007; July 1, 2011; October 1, 2012.
General Authority: NDCC 53-06.2-05
Law Implemented: NDCC 53-06.2-05, 53-06.2-06, 53-06.2-07, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

69.5-01-11-14. Totalizator system standards - Operational requirements.

1. **General management requirements.**

a. Programming.

(1) A totalizator company shall develop and maintain written procedure manuals that outline structured programming methods used by the programmers. The manuals must give the programmers sufficient information to understand the programming methodologies, base operating systems, and maintenance procedures.

(2) The totalizator company shall develop and maintain a written systems development life cycle that requires signoffs at pertinent checkpoints. It must address all the following or the equivalent as acceptable to the commission;

(a) A procedure for accepting written requests for systems design or major program changes from users and a method for handling and recording these requests.

(b) The feasibility study stage.

(c) The general systems design stage.

(d) Detailed systems specification.

(e) Program testing.

(f) System testing.

(g) Conversion.

(h) Systems acceptance by the totalizator company.

(3) A totalizator company must develop and follow procedures to manage all program changes without regard to the complexity of the modification. The procedures must do all of the following:

(a) Establish controls to prevent unauthorized and potentially inaccurate program changes from being incorporated into the production environment.

(b) Regulate both scheduled and emergency changes to ensure the integrity of the computer system.

(c) Permit revisions of computer programs submitted on a sequentially numbered basis.

(d) Require program changes to be developed, tested, and compiled only in a test environment that is not connected to an online totalizator network.

(e) Require all program changes to be thoroughly tested, reviewed, and approved pursuant to procedures adopted by the totalizator company before being placed into operation.

(f) Maintain a written or electronic log, to be made available to the commission upon request, when programmers have physical access to the totalizator room or electronic access to the operation environment.

(4) Before a totalizator company may place a major programming revision into production or transfer any data affected by the revision from the test environment to the production environment, the totalizator company must follow the procedures required by subdivision d of subsection 4 of section 69.5-01-11-13.

b. Totalizator operations. A totalizator company shall maintain a written operations manual for the totalizator system. The manual must clarify the authority, duties, responsibilities, and lines of communication. The manual must contain sufficient detail to ensure totalizator personnel understand their job duties. The

operations manual must include complete documentation for operation of the totalizator system and its software, including all of the following:

(1) The duties described in subsection 2.

(2) Clearly defined restrictions for totalizator room access.

(3) General block diagrams of program options (menu tree) available to totalizator operations.

(4) A glossary of terms used in reports, including formulas for calculating the displayed results.

(5) The relationship, if any, between information contained in reports.

(6) Startup and shutdown procedures.

(7) General operating procedures.

(8) Restart and recovery procedures.

(9) Emergency procedures, including a list of individuals to notify if a system requires an emergency revision.

2. **Personnel requirements.**

a. General requirements.

(1) A totalizator company must provide necessary personnel to perform the duties described in the rules. The totalizator company shall employ a sufficient number of personnel to ensure an adequate segregation of duties to avoid collusion. The totalizator company may use job titles different from those in the rules.

(2) All totalizator personnel assigned to work on totalizator operations in North Dakota must be licensed by the commission.

(3) The totalizator company shall have procedures and documentation that show the verification of totalizator position applicants' experience and education as indicated on their job applications. The totalizator company must prescribe and maintain job descriptions containing the experience, education, and organization training requirements for all of the following totalizator positions, if necessary:

(a) Network manager.

(b) Programmer or software engineer.

(c) Systems analyst.

(d) Totalizator operator.

(e) Technicians.

(4) The totalizator company must certify in writing annually that its personnel are properly trained to program, manage, operate, and maintain the totalizator system. The totalizator company must provide ongoing training to its personnel and document the training.

(5) The totalizator company is responsible for the actions of its personnel relating to the operations and use of the totalizator system. The totalizator company shall designate an individual to act as a point of contact for communications between the commission and the totalizator company.

(6) A totalizator company employee may not hold a position of programmer and totalizator operator simultaneously unless approved by the commission.

(7) A totalizator company employee is prohibited from wagering at any time at any location where the company provides service.

(8) The totalizator company shall have a policy of mandatory time away from the job for each totalizator personnel within each calendar year.

b. Network manager. The duties of a network manager shall include all of the following:

(1) Coordinate the totalizator company's totalizator systems operating in North Dakota or at a specific site in North Dakota.

(2) Ensure each totalizator operator follows proper procedures when operating the totalizator system.

(3) Determine the onsite and offsite storage locations for the backup media.

(4) Provide information and prepare any report requested by the authorized pari-mutuel wagering entity, the commission, or the tax commissioner, if appropriate.

(5) Ensure a current list of personnel is maintained, all totalizator operators are qualified, and the appropriate pari-mutuel information is maintained within the operating system and application programs.

c. Totalizator operator. The duties of a totalizator operator shall include all of the following:

(1) Maintain the communication links and ensure data is transmitted accurately.

(2) Consult with the pari-mutuel manager and the commission or duly appointed representative, if available, when a problem occurs in determining a pool or calculation, and suggest alternatives for continued operation, including possible temporary restrictions on or suspension of the communication links.

(3) Perform necessary daily performance testing, system initialization, monitoring of wagering operations, and system shutdown.

(4) Execute established procedures to shut down system software and hardware in emergency situations including loss of communication between computers or peripheral devices, power surges or failures, operating with a partial system, and restarting the system during a performance.

(5) Perform necessary system maintenance.

(6) Perform daily backups required by subdivision c of subsection 4 of section 69.5-01-11-13.

(7) Ensure information is entered in the tote maintenance log detailing all repairs or modifications to the totalizator system.

(8) Provide to the commission an initial incident report within twenty-four hours of the incident, with a final report submitted as necessary, detailing each unusual occurrence during totalizator system operations, including a description of the probable cause of the occurrence and the corrective action taken.

(9) Maintain a copy of the incident report or enter information about each unusual occurrence in the system incident log.

(10) Consult with the commission or duly appointed representative regarding any other operational issues encountered.

d. Technicians. The duties of technicians shall include all of the following:

(1) Service and maintain the totalizator.

(2) Perform maintenance on wagering devices and the tote board.

(3) Record in the totalizator maintenance log all maintenance and repair activities performed.

3. **Totalizator network.** Common pools must be merged and calculated at the site the totalizator company designates as the network computing center. In a tote-to-tote network or at remote sites, the totalizator company must use the inter-tote system protocol endorsed by the association of racing commissions international or another inter-tote communication protocol prescribed by the commission.

4. **Data transmission protocols.** An authorized pari-mutuel wagering entity using a wagering device-to-tote network may use whatever communications protocol it wishes. A remote site is considered part of a tote-to-tote network and is subject to the requirements of subsection 3 of section 69.5-01-11-13. If the failure to compile pools or payout winning prices is isolated to a remote site, the stopping of wagering or the manual cashing and accounting of tickets need only occur at the affected site. The relevant information must be transmitted between the central processing location and the remote site through the established communication links or facsimile machine and must be verified.

History: Effective July 1, 2011.
General Authority: NDCC 53-06.2-05
Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

69.5-01-11-15. Totalizator system standards - Reporting and log requirements.

1. **General requirements.**

a. A totalizator system must be able to produce reports and logs necessary to audit pari-mutuel activity and to recreate any given day of wagering in its entirety in a format prescribed by the commission.

b. A totalizator company shall retain the information needed to produce these reports and logs on storage devices for at least three years after the end of the calendar year during which the reports and logs were created, unless otherwise released by the commission.

c. A totalizator company shall provide a report or log requested by the commission within forty-eight hours, unless required otherwise, after the totalizator company receives the request. A printed report must have consecutively numbered pages. Each page of the report must be headed with all of the following:

(1) The name of the race track.

(2) The date and time, in hours, minutes, and seconds, the report was produced.

(3) The performance number, if applicable.

(4) The wagering sites to which the report refers.

(5) The version of software in use.

2. **Pre-race reports.** If requested by the commission, before starting wagering each day, the totalizator operator shall print all of the following reports:

a. System initialization report showing all of the following:

(1) The date and time the system was initialized.

(2) The identity of the totalizator operator initializing the system.

(3) The software version in use.

b. Configuration parameter report showing all of the following:

(1) The pools that may be offered as well as those that are currently operational in the totalizator system.

(2) The display cycle frequency, pools, any minimum pool required, minimum wagers, and means of display of any approximate odds or will-pays produced.

(3) The minimum and maximum value of wagers for every pool that a wagering device may accept.

(4) Which wagering devices are activated, including a listing of all terminals operational that session or day.

(5) Which remote sites may input into the totalizator system.

(6) The split percentages and payout parameters for each multi-leg pool offered.

(7) Verification of all operational locking devices.

(8) The amount of delay between locking switch activation and actual stop betting or canceling.

(9) The canceling parameters for regular and supervisory wagering devices.

(10) Configurations placed on each wagering device.

(11) The method of breakage and rounding used in calculating the payout.

(12) Takeout percentages for each host site and for the live races, including takeout percentages for each association, state, and other statutory takeouts used in price calculations, including net pool pricing calculations.

(13) Federal tax withholding rates and parameters.

(14) Required currency conversion tables.

c. Race information report showing, for each race to be offered, all of the following:

(1) The pools to be opened, indicating totals starting at zero and totals starting with money from advance wagering.

(2) Pool summaries of all advance wagering.

(3) Money added due to overages.

(4) Underpayments or money added due to carryovers, miss pools, or any other reasons.

(5) The betting interest for each race, showing entries and scratches.

d. Odd report showing the opening line of odds for the win pool.

e. Wagering device report listing the teller's identity assigned to each wagering device for that session or day, if applicable.

3. **Race-by-race reports.** For each race offered, the totalizator system must be capable of printing all of the following reports and have them available to review by the pari-mutuel manager and as requested by the commission:

   a. Scratch report showing the time each late scratch was entered into the totalizator system and the amount of money to be refunded in each pool.

   b. Betting report produced immediately on activation of the stop betting command and final merge of wagering information from all sites showing all of the following:

      (1) The amount wagered and to be refunded for each betting interest or combination in each pool offered and the net amount for each pool to be used for calculating the payout.

      (2) The final dollar odds for the win pool.

      (3) Time of stop betting and time of each pool transmission.

   c. Calculating price report, produced before each race is declared official, showing all of the following for each pool:

      (1) The winning betting interests or combinations.

      (2) The winning moneys in total and for imported hubs.

      (3) The minimum payout prices.

      (4) The breakage.

      (5) The amount payable to the public.

      (6) The total amount wagered.

      (7) The total amount refunded.

      (8) The amount added to the pool.

      (9) The actual pool total.

      (10) The takeout in total dollars.

   d. Probable payout report showing the payouts for multiple and exotic pools, subject to scratches, cancellations, and dead heats.

   e. Scan report for multi-leg pools of four or more legs, showing all of the following:

(1) The total wagered in the pool.

(2) The amounts of any carryover.

(3) The winners of completed legs.

(4) The amount of possible winning, based on paying the winner of completed legs combined with every betting interest entered in subsequent legs.

(5) Late scratches in each leg.

f. Race summary report, produced before and after the race results are official, showing, as the sum for all pools paid out in that race, all of the following:

(1) The amount wagered.

(2) The amount refunded.

(3) The net amount to be used for calculating the payout.

(4) Any money added to the pool.

(5) The actual pool total.

(6) The total commission.

(7) The breakage.

(8) The amount paid to the public.

(9) The carryover balances.

(10) The liabilities (due to/due from).

(11) The daily summary report showing the cumulative totals, for each pool and for all pools combined, of the items listed under the race summary report.

4. **End-of-day reports.** For each race offered, the totalizator system must be capable of producing all of the following reports, and have them available for review by the pari-mutuel manager and as requested by the commission:

a. Balance report showing for every wagering device operated on that day, including all of the following:

(1) The teller's name or identification number, if applicable.

(2) The total value and number of tickets sold, canceled, and cashed, separating the outs from the current day's tickets.

(3) The total amount of money drawn from the money room, including the beginning draws.

(4) The total amount of money returned to the money room.

(5) A listing of adjustments made to each wagering device balance after each wagering device has been individually balanced.

b. Wagering summary report showing all of the following:

(1) By wagering site, the amount wagered, refunded, and added for every pool and for each race.

(2) The time of day each race's pools closed.

(3) The commissions deducted, breakage calculated, and amount paid out for every pool in each race.

(4) The total value of outstanding tickets before the pools were opened for the performance, the value of tickets cashed during the performance, the value of tickets to be added to the outstanding ticket total, and the new outstanding ticket total.

(5) The total value of outstanding vouchers before the pools were opened for the performance, the value of vouchers cashed during the performance, the value of vouchers to be added to the outstanding voucher total, and the new outstanding voucher total.

c. System balance report comparing the pool and paid-out totals obtained by processing the transaction files with the pool and paid-out totals obtained from the actual calculations.

d. Money room balance report showing cash added and subtracted from the beginning day's balance resulting from the day's wagering and cashing transactions.Money room balance report showing cash added and subtracted from the beginning day's balance resulting from the day's wagering and cashing transactions.Money room balance report showing cash added and subtracted from the beginning day's balance resulting from the day's wagering and cashing transactions.Money room balance report showing cash added and subtracted from the beginning day's balance resulting from the day's wagering and cashing transactions.Money room balance report showing cash added and subtracted from the

beginning day's balance resulting from the day's wagering and cashing transactions.

e. Internal revenue service report showing the winnner's social security number, the ticket number, amount won, and taxes withheld for each transaction requiring a form W2-G.

5. **Other standard and special reports.**

a. A totalizator company shall produce any of the following standard reports requested by the commission no later than seventy-two hours, unless otherwise directed, after receiving the request:

(1) Odds progression report showing each successive line of odds for the win pool and the time it was displayed to the public.

(2) Ticket and transaction history report showing the appropriate portion of the ticket history log for the requested ticket identification numbers.

(3) Terminal history report showing the portion of the terminal log requested.

(4) Outstanding ticket report showing all the following information for uncashed winning tickets retained in the totalizator system:

(a) The ticket identification number.

(b) The wagers on the ticket.

(c) The date and performance for which the ticket is outstanding.

(d) The value of the winning wagers.

(e) The wagering device location and number.

(5) Outstanding tickets cashed report for a performance, race, or pool, showing each outstanding ticket cashed that day, in the form of the outstanding ticket report, including the identity of the wagering device that cashed the ticket and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read.

(6) Manually cashed tickets report for a performance, race, or pool, showing every ticket cashed that day in the form of the ticket history report, the identity of the wagering device that

cashed the ticket, and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read as well as a subtotal for each wagering device.

(7) Canceled tickets report for a performance or race, showing each ticket canceled that day in the form of the ticket history report, the identity of the wagering device that cashed the ticket, and an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read as well as a subtotal for each wagering device.

(8) Network balance report summarizing the activity and liabilities for each site within a tote-to-tote network.

(9) Teller inquiry report showing the time of each cash balance inquiry made by each teller.

(10) Wagering report required for multi-leg pools, four legs or more, showing the amount bet on every combination of the pool and total amount bet.

(11) Account history report showing all activity for each account.

(12) Inter-track wagering report for a card showing the separate or consolidated report for wagers made at participating tracks, including all money wagered on each runner or combination of runners in each pool for each race. Separate or consolidated reports for the host track and each satellite track and the combined totals are required and any additional reports, as determined by the commission.

(13) Ticket history report and terminal history report in the case of a wagering device to totalizator network failure for specific locations and time periods in order to determine what wagers have been recorded in the totalizator from the remote site, including any advance bets.

(14) Pool transmission report listing time of each pool transmission.

b. The totalizator system must be able to produce a special report that filters data by all of the following:

(1) Performance.

(2) Race.

(3) Pool.

(4) Betting interest.

(5) Wagering device.

(6) Sites.

(7) Any combination of paragraphs 1 through 6.

6. **Logs.**

a. Online logs. The totalizator operator shall produce a daily log to the commission on request. The totalizator system must produce all the following logs in a format prescribed by the commission:

(1) Teller or machine history log showing for every wagering device operated during a performance all of the following:

(a) Each time the wagering device was opened and closed.

(b) For each wagering transaction, the wagers made, tickets issued, and total value of the transaction.

(c) For each cashing, canceling, or refunding transaction, the identification numbers of the tickets processed, the wagers paid out, and the value of the wagers paid out.

(d) For each cashing transaction, an indication as to whether the ticket was cashed using a manual keyboard entry or an automatic machine read.

(e) The amount of each cash draw and return.

(f) Any special function, including teller balance, accessed through the wagering device.

(g) The times of day each of the transactions listed were made.

(2) Ticket history log showing all of the following for every ticket issued:

(a) The identification number of each cashed or canceled ticket.

(b) The wagering device location and number.

(c) The wagers and their values.

(d) The cashing or canceling machine location and number.

(e) The amount paid out.

(f) The time of day each transaction occurred.

(g) An indication as to whether each transaction was manual or automatic.

(3) User terminal log showing the time of day of each entry for all of the following:

(a) Each terminal other than a wagering device operating during a day, including all of the following:

[1] Each logon or logoff and the operator's identification code.

[2] Each command or transaction entered.

[3] Each stop-betting, order of finish, official, and sales open command and the device that issued it.

[4] Each occurrence of loss or restoration of communication between computers or sites.

[5] Each occurrence of discrepancy between computers or sites when comparing databases.

(b) Each wagering device operated during a performance, including all of the following:

[1] Each logon or logoff and the teller's identification code, if applicable.

[2] Each instance of loss or restoration of communication and the wagering device.

(4) System error log showing the date and time of each error.

(5) System journal log, including date and time of each entry, including remote access, showing all of the following for every day the system is operated for wagering, maintenance, or other purpose:

(a) System shutdown commands, the device from which they were issued, and the user identification of the individual issuing the commands.

(b) The individual user identification used and the originating device for every attempt, successful or unsuccessful, to access the operating system.

(c) The individual user identification used and the originating device for every attempt, successful or unsuccessful, to access the application programs.

(d) All commands that affect the operating environments issued from the operating system command line.

(e) All commands issued from within the application program in an attempt to access the operating system.

(f) A listing of every operational or operating terminal during computer operation.

(6) Account history log showing all of the following for every account:

(a) The identification number of the account.

(b) Each time the account was accessed, the location and time of each access point.

(c) For each wagering transaction, the amount, time, betting interest selected, type of wagers made, the wagering device used to make the wager, and total value of the transaction.

(d) For each cashing, canceling, or refunding transaction, the identification numbers of the tickets processed, the wagers paid out, and the location, time, and value of the wagers paid out.

(e) For each withdrawal and deposit the amount, location, and time.

b. Offline log. In addition to the computer-generated reports and logs, the totalizator personnel must maintain all of the following logs for review by the commission or duly appointed representative:

(1) System incident log showing a description of each incident involving the totalizator system, including system failures, their causes, and corrective actions taken.

(2) Totalizator room access log of all authorized persons entering and leaving the totalizator central computer room.

This includes entries of date, time, and user identification of each person entering and leaving the room.

(3) Totalizator maintenance log of all maintenance work completed on wagering devices and the main totalizator computers or printers showing all of the following:

(a) The name of the person performing the work.

(b) The date and time of day when the maintenance was performed.

(c) The type of maintenance job performed.

History: Effective July 1, 2011.
General Authority: NDCC 53-06.2-05
Law Implemented: NDCC 53-06.2-04, 53-06.2-05, 53-06.2-08, 53-06.2-10.1, 53-06.2-14

TITLE 73

SECURITIES COMMISSIONER

OCTOBER 2012

CHAPTER 73-02-01
REGISTRATION OF SECURITIES

73-02-01-02. Adoption of NASAA statements of policy for registration of certain types of securities. In cooperation with the administrators of the securities laws of other states and with a view toward achieving maximum uniformity of regulations regarding the registration of securities, the filing for approval of the use of an exemption from registration, and the business practices of the securities industry, the securities commissioner will utilize, where applicable, the criteria contained in the North American securities administrators association, inc. (NASAA) statements of policy set forth in this section for offerings registering and for applications for exemption from registration, pursuant to North Dakota Century Code chapter 10-04:

1. Registration of asset-backed securities, adopted October 25, 1995, as amended May 6, 2012;

2. Registration of publicly offered cattle-feeding programs, adopted September 17, 1980;

3. Church bonds, adopted April 14, 2002;

4. Church extension fund securities, adopted April 17, 1994, as amended April 18, 2004;

5. Registration of commodity pool programs, adopted September 21, 1983, as amended May 6, 2012;

6. Corporate securities definitions, adopted April 27, 1997, as amended March 31, 2008;

7. Debt securities, adopted April 25, 1993;

8. Equipment programs, adopted November 20, 1986, as amended May 6, 2012;

9. Health care facility offerings, adopted April 5, 1985;

10. Impoundment of proceeds, adopted April 27, 1997, as amended March 31, 2008;

11. Loans and other material affiliated transactions, adopted April 27, 1997, as amended March 31, 2008;

12. Mortgage program guidelines, adopted September 10, 1996, as amended May 7, 2007;

13. Registration of oil and gas programs, adopted September 22, 1976, as amended May 6, 2012;

14. Registration of direct participation programs - omnibus guidelines, adopted March 29, 1992, as amended May 7, 2007;

15. Options and warrants, as amended March 31, 2008;

16. Preferred stocks, adopted April 27, 1997, as amended March 31, 2008;

17. Promoter's equity investment, adopted April 27, 1997, as amended March 31, 2008;

18. Promotional shares, adopted April 27, 1997, as amended March 31, 2008;

19. Real estate investment trusts, revised and adopted September 29, 1993, as amended May 7, 2007;

20. Real estate programs, adopted September 29, 1993, as amended May 7, 2007;

21. Risk disclosure guidelines, adopted September 9, 2001;

22. Specificity in use of proceeds, adopted September 28, 1999, as amended March 31, 2008;

23. Underwriting expenses and underwriter's warrants, adopted April 27, 1997, as amended March 31, 2008;

24. Unequal voting rights, adopted October 24, 1991, as amended March 31, 2008;

25. Uniform disclosure guidelines for cover legends, adopted October 2, 2004; and

26. Unsound financial condition, adopted April 27, 1997, as amended March 31, 2008.

The statements of policy referred to in this section are found in CCH NASAA reports, published by commerce clearinghouse, and as also available at the office of the North Dakota securities department, 600 east boulevard avenue, state capitol - fifth floor, Bismarck, North Dakota, during regular business hours, or on the department's website, www.ndsecurities.com. The securities commissioner may waive or modify any of the requirements of the statements of policy or guidelines for good cause shown, upon written request of the registrant, if the securities commissioner finds that the requirement is not necessary to protect the public interest under the circumstances.

History: Effective October 1, 2012.
General Authority: NDCC 10-04-03
Law Implemented: NDCC 10-04-08.1

TITLE 74

STATE SEED DEPARTMENT

OCTOBER 2012

CHAPTER 74-03-01
GENERAL SEED CERTIFICATION REQUIREMENTS

74-03-01-03. Eligibility requirement for certification of crop varieties. As used in this chapter, "variety" includes hybrids and breeding lines, and selections, clones, or strains of true varieties.

1. Only those varieties that are accepted by the North Dakota state seed department as meriting certification in accordance with the criteria established by the association of official seed certifying agencies shall be eligible for certification. A variety will normally be considered eligible for certification if it has received favorable action by one or more of the following:

a. A national variety review board.

b. The plant variety protection office, including additional information itemized in subdivisions e through i of subsection 2 of section 74-03-01-03, which is required.

c. An official seed certifying agency.

d. The organization for economic cooperation and development (OECD).

In the absence of a national review board, a state or regional variety review committee may determine the eligibility for certification, if operating under similar criteria and approved by the seed commissioner. Contact the state seed commissioner for varieties not covered by one of the above categories on questions regarding eligibility.

2. The following must be made available by the originator, developer, owner, or agent when eligibility for certification is requested by the applicant. After a variety has been released, there is no limitation as to when it may be accepted into certification by AOSCA or its vested member agencies providing that all other provisions of this section are met.

a. The name of the variety. This name must be the established name if the variety has previously been marketed.

b. A statement concerning the variety's origin and the breeding procedure used in its development.

c. A detailed description of the morphological, physiological, and other characteristics of the plants and seed that distinguish it from other varieties.

d. Evidence of performance of the variety, such as comparative yield data, insect and disease resistance, or other factors supporting the identity of the variety.

e. A statement delineating the geographic area of ~~adaption~~ adaptation of the variety.

f. A statement on the plans and procedures for the maintenance of stock seed classes, including the number of generations through which the variety may be multiplied.

g. A description of the manner in which the variety is constituted when a particular cycle of reproduction or multiplication is specified.

h. Any additional restrictions on the variety, specified by the breeder, with respect to geographic area of seed production, age of stand, or other factors affecting genetic purity.

(1) Should testing be required to verify the presence of a particular trait by the developer, sponsoring breeder, or originator before final certification, the exact protocols, approved facilities, tolerances, and all other relevant information will be provided to the seed-certifying agency that may retain the results of any test for its records.

(2) Additional certification requirements. Seed may require additional certification requirements that are clearly referenced in the variety description, provided that the following is completed:

(a) Additional certification requirements have been communicated by the sponsoring breeder or originator to all parties involved with regulation and production of the variety; and

(b) The sponsoring breeder or originator shall authorize the seed-certifying agency to verify specific characteristics that are referenced in the variety description. Verification of such characteristics will be completed before a certificate (tag) of final certification is issued by the seed-certifying agency.

i. A sample of seed representative of the variety that will be planted for certified seed production.

3. This rule does not create a mandatory duty or a cause of action on account of the department's recognizing or refusing to recognize a variety as meriting certification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-43

74-03-01-04. Classes (generation) and sources of certified seed.

1. Four classes (generations) of seed shall be recognized in seed certification: breeder, foundation, registered, and certified.

a. Breeder seed is directly controlled by the originating plant breeder, sponsoring institution or firm, which supplies the source for the initial and recurring increase of foundation seed.

b. Foundation seed is the progeny of breeder or foundation seed produced under control of the originator or sponsoring plant breeding institution, or person, or designee thereof. As applied to certified seed, foundation seed is a class of certified seed produced under procedures established by the certifying agency for the purpose of maintaining genetic purity and identity.

c. Registered seed is the progeny of foundation or other approved seed stocks that is so handled as to maintain satisfactory genetic identity and purity and that has been approved and certified by the certifying agency. This class of seed shall be of a quality suitable for the production of certified seed.

d. Certified seed is the progeny of foundation, registered, or other approved seed stocks that is so handled as to maintain satisfactory genetic identity and purity and that has been approved by the state seed department.

2. The number of generations ~~through~~ which a variety may be multiplied shall be limited to that specified by the originating breeder or owner of a variety, but shall not exceed two generations beyond foundation seed. The following exceptions to the limitation of generations are allowed with permission from the variety owner and authorization from the state seed department:

   a. Unlimited recertification of the certified class may be permitted for crop varieties when foundation seed is not being maintained.

   b. The production of an additional generation of the certified class may be permitted on a one-year basis when:

      (1) ~~An emergency is declared prior to the planting season by the certifying agency stating that foundation~~ Foundation and registered seed supplies are not adequate to plant the needed certified acreage of the variety; and

      (2) The additional generation of certified seed produced to meet the emergency is declared ineligible for recertification.

3. Seed that fails to meet the certification standards for reasons other than those affecting genetic purity may be certified ~~in emergency situations~~ and will be labeled ~~with a~~ as "substandard ~~grade~~" ~~label~~.

History: Amended effective May 1, 1986; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-42, 4.1-53-44, 4.1-53-45

74-03-01-06. Seed eligibility.

1. The seed department shall be supplied with satisfactory evidence of the source and class of seed used to plant each crop considered for certification.

2. Eligible seed stocks include breeder's, foundation, registered or, in special cases, approved lots of the certified class. Eligible seed obtained from another person must be accompanied by the official tag or bulk certificate from an approved certifying agency, which will be the documentation of acceptance required for field inspection.

3. Certified seed growers may plant seed from their own fields if the field passed inspection and if the class of seed is eligible to be certified. The grower must provide sufficient evidence to the department to verify eligibility.

4. Certified seed growers may only plant seed from their own ~~fields~~ field that failed field inspection previously ~~only~~ if the field did not fail due to genetic purity, and the grower is the applicant for field inspection. If the field fails inspection a second time for any reason, that seed shall no longer be eligible for the production of certified.

5. Contract growers may not replant any of the seed produced unless final certification has been completed.

6. Growers should check with the state seed department regarding approved lots of the certified class eligible for recertification.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-42, 4.1-53-44, 4.1-53-45

74-03-01-08. Field management and isolation. The production unit for certification shall be a field. No field or part of a field will be accepted unless field boundaries are clearly defined and properly isolated according to the specific crop standards. Isolation distances may be extended at the request of the seed commissioner ~~or the commissioner's agents~~ for reasons including the production of transgenic crops or other kinds in proximity to fields being grown for the purpose of seed certification.

When it is necessary to remove a strip to obtain proper isolation, the part of the strip to be removed must be cut into the field to be inspected.

If two classes of the same variety are planted adjacent to one another in the same field, and field inspection has been applied for both, isolation may be accomplished by placing a flag at each end of the field ten feet [3.05 meters] into the higher class of seed, prior to inspection. The flags must be plainly visible at

the time of inspection. The grower may harvest that isolated ten-foot [3.05-meter] section of crop with the lower class of seed.

History: Amended effective September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-42

74-03-01-09. Field inspection.

1. Applications. Applications for field inspection, accompanied by the correct fees, payment of past-due accounts, and proof of seed eligibility, must be received at the state seed department office in Fargo not later than June fifteenth. The penalty fee will apply after that date. Applications for grass seed must be received by May first to avoid late penalty. Applications for millet and buckwheat ~~will~~ must be ~~accepted until~~ received by July fifteenth ~~without~~ to avoid late penalty. Applications for soybeans requiring only a single inspection (preharvest) ~~will~~ must be ~~accepted until~~ received by August first ~~without~~ to avoid late penalty. In case of an emergency or unusual circumstances due to weather or crop conditions, the deadline may be extended at the discretion of the seed commissioner. In such an event, late application penalties may be waived.

2. Information required on application. The application shall be completed by the applicant and returned to the seed department. All questions must be answered completely and correctly. The location of the farm and field, including the legal description, shall be given clearly so that the inspector will be able to find the farm and field readily without waste of time and extra travel. Farm service agency field maps must be provided by the applicant. If the seed is the grower's own seed, sufficient evidence must be provided to the department to verify eligibility. If the seed is purchased, an official certified seed tag or bulk certificates must accompany the application.

3. Roguing and spraying fields. Roguing is essential to maintain the purity of varieties and high standards of certified seed. Roguing fields prior to inspection is recommended to remove undesirable plants from fields. Plants that should be removed include off-type plants, other crop plants, prohibited and restricted noxious weeds, and other impurities which may be growing in the field.

   Roguing is usually done by pulling off-types or other crop plants or weeds and removing them from the field. In the case of small grain, roguing should be done after heading as foreign plants are seen most easily at this time. In hybrid seed production, fertile off-types and undesirable plants should be removed before pollen is shed. Sterile off-types may be removed any time prior to the final inspection.

Whenever practical and advisable, seed fields should be sprayed with pesticides according to the manufacturer's label to control pests. Growers must follow posting requirements as specified by state and federal agencies responsible for the regulation and use of pesticides.

4. Weeds and diseases.

   a. Prohibited noxious weeds under North Dakota seed laws and rules are leafy spurge, field bindweed (creeping jenny), Canada thistle, perennial sow thistle, Russian knapweed, hoary cress (perennial peppergrass), absinth wormwood, ~~hemp having more than three-tenths of one percent tetrahydrocannabinol,~~ musk thistle, spotted knapweed, and yellow starthistle.

   b. Restricted noxious weeds under North Dakota seed laws and rules are dodder species, hedge bindweed (wild morning glory), wild oats, and quackgrass.

   c. A field may be rejected if it is the field inspector's opinion that the amount and kind of weeds present make it difficult to conduct the inspection, or the field condition is such that the quality of the cleaned seed may be questionable.

   d. Objectionable weed seeds are restricted noxious weeds under North Dakota seed laws and rules and may include some common weeds which cause a specific problem in the conditioning of some individual crops.

   e. Diseases not governed by specific crop standards may be cause for rejection if it is the field inspector's opinion that the quality of the cleaned seed may be affected or if results of tests made on the seed indicate a disease condition which will affect the crop produced from such seed.

5. Cancellation of field inspection. An application may be canceled by the applicant before the field inspection is completed. The application fee minus an administrative fee will be refunded to the applicant. The request for cancellation, however, must reach the state seed department before the inspector arrives in the general locality of the field or before inspection has occurred. Refunds will not be made after the field is inspected or because the field has been rejected.

6. Appeal. Reinspection of rejected fields may be considered, provided the application for appeal allows a reasonable amount of time for reinspection prior to harvest. A fee for reinspection may be assessed.

7. The variety name stated on the application will be standard for inspection when entering the field. Absent compelling visual evidence

to the contrary, the variety or selection declared by the ~~grower~~ applicant will be presumed correct if the documentation provided is valid.

~~8. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.~~

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-37, 4.1-53-42, 4.1-53-59

74-03-01-11. Seed conditioning, sampling, ~~conditioning,~~ and laboratory inspection.

1. **Identification in storage.** Field-inspected seed must be identified at all times. Identification must be traceable to field inspection numbers from the crop year in which the seed was produced. Conditioned seed in storage must be identified by kind, variety, class, and lot number displayed on the bin or storage container.

2. **Preconditioned sample testing.** To hasten ~~tagging and~~ labeling or determine the quality of seed which has passed field inspection prior to conditioning, a representative sample of seed ~~from each field which has passed field inspection~~ may be submitted to the state seed department for the purpose of germination and disease testing. ~~This~~ The sample should be cleaned on a small mill or hand sieve to ~~correspond~~ approximate as nearly as possible ~~to~~ the ~~condition~~ quality of the entire lot after ~~cleaning or~~ conditioning.

   Results of germination and disease tests conducted on preconditioned samples may be used for final certification purposes. A ~~grower~~ labeler may request new tests for labeling purposes after ~~conditioning to be used for labeling purposes~~ the seed lot is conditioned. Fragile crops such as soybeans, field beans, lentils, chickpeas, and field peas must be tested for germination after the final conditioning of the seed lot to assure correctness of label claims. The labeler is responsible in all cases for information ~~provided or~~ stated on seed labels.

3. **Conditioning.** All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class. Field-inspected seed may be conditioned either by the grower or by an approved seed conditioner.

   a. Conditioning by seed grower.

(1) A seed grower does not need an approved conditioning facility permit if the grower conditions the grower's own seed on the grower's premises with the grower's equipment.

(2) The seed grower must complete a sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed log, and deliver to the state seed department for analysis.

b. Conditioning by an approved facility.

(1) To be eligible for final certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final certification.

(2) If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner.

(3) While conditioning, the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.

~~3.~~ 4. **Sampling procedures.**

a. All seed lots eligible for final certification shall be sampled during conditioning ~~by taking representative samples at periodic intervals throughout the process of conditioning the seed lot.~~ as follows:

(1) Portions of conditioned seed may be drawn by hand as seed is conditioned to form a composite, representative sample for a seed lot; or

(2) Automatic mechanical devices may be used to continually or intermittently draw representative samples as a seed lot is conditioned.

b. Specific instructions to samplers are found on the reverse side of the samplers report.

~~4.~~ 5. **Maximum lot size and numbering.**

a. The maximum lot size for bagged seed is five thousand bushels [17619.54 dekaliters] except for small seeded legumes and grasses which is twenty-two thousand five hundred pounds [10000

kilograms]. Bulk seed lots do not have a maximum size limit except bin capacity. Each bin is considered a separate seed lot. For all crops, one sample for each lot is required. The entire lot must be certified at the time final certification is completed.

b. The lot number shall be designated by the labeler. The lot number of the seed planted may not be used as the new lot number for the seed being certified during the current crop year.

~~5.~~ 6. **Commingling (mixing) of inspected seed fields.** Seed of the same kind and variety from different fields that pass field inspection may be commingled if the seed is of the same class and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only.

~~6.~~ 7. **Commingling carryover certified seed lots.** Carryover seed from certified lots may be commingled if the seed is of the same variety, class, and general quality. If seed of different classes is commingled, the seed becomes eligible for the lowest class only. A new germination test is required for labeling. Germination tests should be done on each lot prior to commingling to ensure none of the lots have gone out of condition.

~~7. **Conditioning.**~~

~~a. All field-inspected seed which is to be labeled must be conditioned and must meet the minimum seed standards for the crop and class.~~

~~b. Field-inspected seed may be conditioned either by the grower or by an approved seed conditioner.~~

~~8. **Conditioning by seed grower.**~~

~~a. A seed grower does not need an approved conditioning facility permit if the grower conditions the grower's own seed on the grower's premises with the grower's equipment.~~

~~b. The seed grower must complete a sampler's report in its entirety, attach the report to a two-pound [.907-kilogram] sample that is representative of the entire seed lot, and deliver to the state seed department in Fargo for analysis.~~

~~9. **Conditioning by an approved facility.**~~

~~a. To be eligible for final certification, field-inspected seed shall be conditioned by a facility approved by the seed department. Seed conditioned at an unapproved facility will be ineligible for final certification.~~

~~b. If ownership of the seed lot is transferred to a different individual or entity, the grower must complete and sign a grower's declaration. Transfer of ownership of field-inspected seed is limited to an approved conditioner or bulk retailer unless the transfer has been approved by the commissioner or the commissioner's agent.~~

~~c. While conditioning, the seed lot must be sampled at regular intervals by an authorized sampler. The sample and completed sampler's report must be submitted to the state seed department for analysis.~~

~~10.~~ 8. **~~Regulatory sampling.~~** The state seed department may resample any lot of seed before final certification or after the seed is labeled.

9. **Official samples.** At the request of a customer, an official sample may be collected by a representative of the seed department, with expenses incurred by the customer. The seed department shall determine the appropriate collection method and sample size. Sampling bulk seed in bins requires that a minimal amount of seed is withdrawn from the bin. The amount shall be determined by the quantity of seed in the lot, but shall be no less than five percent of the total lot size. Test results from official samples shall supersede all previous test results and shall be final.

~~11.~~ 10. **Laboratory analysis.**

a. All laboratory testing shall be done by qualified personnel of the state seed department. Analysis and tests of seed samples and definition of analysis terms shall be in accordance with the rules of the association of official seed analysts (AOSA). In certain cases when time constraints are critical to the efficient movement of certified seed, the commissioner may accept germination or other test results from an approved laboratory, through the certification agency of the state of origin of the seed.

b. If more than one sample of seed from the same lot is tested ~~for purity~~ without additional conditioning, an average shall be taken of all purity tests conducted. Results from the most recent germination or disease test shall be used as the final result.

~~c. The test results from official samples drawn by state seed department personnel shall supersede all other test results from submitted samples.~~

~~d.~~ c. Seed from certain classes or kinds, or both, may be subject to variety identification analysis at the discretion of the department, with testing fees payable by the grower or labeler.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-46

74-03-01-12. Labeling. All classes of certified seed, when offered for sale, shall have an official certification label affixed to each container clearly identifying the certification agency, the lot number or other identification, variety name and kind, and class of seed. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.

1. Records. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours. Records shall include:

   a. Quantity of seed grown and conditioned or purchased for bulk sale.

   b. Quantity of bulk certified seed sold by variety and lot number.

   c. A current inventory of each variety of seed available for sale.

   d. Consult Federal Seed Act regulations part 201 for recordkeeping requirements for seed in interstate commerce.

2. Samples. It is the initial labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, class, and lot number of each lot of certified seed sold, whether bagged or in bulk, for a period of one year after the final disposition of the seed lot.

3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law, and any such disclaimer of vendor's express or implied warranty is invalid.

~~1.~~ 4. Bagged seed.

   a. All bagged seed represented or sold as foundation, registered, or certified must be bagged in new bags and the official certification tag properly affixed on the bag. Certification tags are void if improperly used or not attached to the bag. Containers or tote bags larger than one hundred sixty pounds [72.77 kilograms] may be considered bulk seed.

~~b. The responsibility for properly labeling foundation, registered, or certified seed rests with the grower or first distributor.~~

~~c.~~ b. The use of two tags, the official certification tag and a separate analysis tag, on foundation, registered, or certified seed is optional. ~~When two tags are used, the certification tag, will not carry the seed analysis. An additional seed analysis tag must be used or the analysis printed on the bag.~~

~~d.~~ c. Certified seed will be considered mislabeled unless the seed analysis is on either the certification tag or on an additional tag or printed on the bag.

~~e.~~ d. Certification tags are not valid when they are transferred in any manner other than attached to the eligible seed bag.

~~2.~~ 5. Bulk ~~certification~~ seed. ~~All rules and standards for production, conditioning, and testing of certified seed shall apply except that seed does not have to be in bags.~~ In the case of seed sold in bulk, the bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.

a. Foundation and registered class seed may be sold in bulk only by the applicant producer, or by an approved conditioner ~~only~~.

b. Certified class seed may be sold in bulk by the applicant producer, an approved conditioner, or an approved bulk retail facility.

c. Approved bulk retail facilities may be allowed to handle bulk registered seed on a case-by-case basis only when authorized by the state seed department. If authorized by the seed department, the bulk retailer must designate which bins will be used for registered seed.

d. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.

e. Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.

f. Handling bulk certified seed:

(1) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.

(2) All bins, augers, converyors, and other equipment must be cleaned before storage or handling certified seed.

(3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.

(4) All augers used to convey seed must be reversible.

(5) All bins must be clearly and prominently marked to show kind, variety, class, and lot number.

(6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.

~~d.~~ g. A maximum of two physical transfers are permitted after final certification~~:~~.

~~(1) From the applicant labeler to an approved retailer or consumer.~~

~~(2) From an approved retailer to consumer.~~

~~e.~~ h. It is the seller's responsibility to:

(1) Handle seed in a manner to prevent mixtures and contamination.

(2) Supply seed that is representative of the seed tested and approved for certification.

(3) Ensure all bins, augers, conveyors, and other equipment are adequately cleaned before handling certified seed.

(4) Determine that the vehicle receiving bulk certified seed has been cleaned prior to receiving the seed. If it is not clean, this is to be noted on the bill of sale or transfer certificate.

(5) Provide to the purchaser a bulk certificate for each load of bulk certified seed at the time of delivery.

(6) Ensure that the conditioned lot is not moved from the premises of the approved conditioning facility or labeler's facility until the sample has been tested by the state seed

department laboratory and shows that the lot is eligible for certification.

~~f.~~ i. It is the buyer's responsibility to:

(1) Obtain a bulk certificate from the seller for each load of bulk certified seed at the time of delivery.

(2) Provide a clean vehicle or container in which to load seed.

(3) Maintain purity of the seed after it has been loaded into the buyer's vehicle.

~~g. The bulk certified seed certificate takes the place of the certified seed tag. The complete seed analysis will be printed on the certificate.~~

~~h. Bulk retail seed facilities must be approved annually before certified seed can be handled in bulk. Such facilities may be part of a seed conditioning facility or may be approved only for handling bulk certified seed. Before approval, all procedures for receiving, storing, dispensing, and recordkeeping must be inspected. The applicant must demonstrate acceptable procedures for maintaining purity and identity of bulk certified seed.~~

~~i. For all bulk certified seed:~~

~~(1) A separate storage bin must be available for each lot that will be sold in bulk. Each bin shall be considered a separate lot of seed and shall be labeled accordingly.~~

~~(2) All bins, augers, conveyors, and other equipment must be cleaned before storage or handling certified seed.~~

~~(3) All hopper bins must be equipped with bottom access ports, inside ladders, or some other means approved by the seed department to facilitate access for cleaning.~~

~~(4) All augers used to convey seed must be reversible.~~

~~(5) All bins must be clearly and prominently marked to show kind, variety, class, and lot number.~~

~~(6) All bin openings must be closed to prevent contamination, except when seed is being put in or removed from the bin, or to allow for aeration.~~

~~(7) Offsite bins or satellite bin locations shall be managed in the same manner as those at an approved facility. Bins shall~~

~~be listed on a separate bin list registered under the name of an approved facility. All satellite locations shall be inspected annually by the seed department.~~

~~j. Records. Each person whose name appears on the label and handles seed shall keep for a period of three years complete records of each lot of seed handled. All records pertaining to the lot involved must be accessible for inspection by the commissioner at any time during customary business hours. Records shall include:~~

~~(1) Amount of seed grown and conditioned or purchased for bulk sale.~~

~~(2) Amount of bulk certified seed sold by variety and lot number.~~

~~(3) A current inventory of each variety of seed available for sale.~~

~~(4) It is the initial labeler's responsibility to maintain possession of a two-pound [.907-kilogram] sample identified by kind, variety, class, and lot number of each lot of certified seed sold, whether bagged or in bulk, for a period of two years after the final disposition of the seed lot.~~

~~3. No person may disclaim responsibility of the vendor of the seed for the data on the label required by law and any such disclaimer of vendor's express or implied warranty is invalid.~~

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-10
Law Implemented: NDCC 4.1-53-11, 4.1-53-10, 4.1-53-12, 4.1-53-13, 4.1-53-39

74-03-01-13. Preissued certification tags. Certified tags may be issued before conditioning only if prior approval has been granted by the state seed department. Tags will be preissued only under the following conditions:

~~1. Tags will be issued only to approved conditioning facilities.~~

~~2.~~ 1. ~~Final samples~~ A representative sample from the conditioned seed lot, along with the grower's declaration, if required, sampler's report, and printed analysis tag must be submitted immediately after ~~each~~ the lot is conditioned.

~~3.~~ 2. The conditioned lot shall not be moved from the labeler's premises ~~of the approved conditioning facility or labeler's facility~~ until the sample has been tested by the state seed department laboratory and final certification has been completed. If the seed lot ~~is~~ does not meet label claims, the lot will be rejected, ~~the approved facility or~~ and the labeler

must ~~assume responsibility for removing~~ remove certification tags and ~~returning~~ return them to the state seed department.

~~4.~~ 3. The use of a certification label preprinted on bags will be permitted if prior approval by the state seed department is granted. Analysis information may also be printed on the bag. The approved conditioning facility must submit a preprinted analysis tag from the bags used with the sample for final certification.

History: Amended effective May 1, 1986; September 1, 2002; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-12, 4.1-53-13, 4.1-53-44

74-03-01-14. Carryover seed.

1. **Unconditioned carryover.** All unconditioned carryover seed eligible for certification must be reported to the state seed department ~~by October first of each year. Growers must report all field-inspected seed that was not submitted for final certification~~. Failure to report will disqualify the seed for certification.

2. **Certified carryover.**

   a. ~~Carryover bagged~~ Bagged seed. All carryover seed must be retested for germination before new certified tags will be issued by the state seed department. ~~New certification tags will be furnished for carryover bagged seed.~~

~~3.~~

   b. ~~Carryover bulk~~ Bulk seed. All carryover bulk seed must be retested for germination before new bulk certificates will be issued. Carryover bulk seed cannot be recertified in bags unless a new ~~samples are~~ sample is submitted for purity and germination analysis.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-12
Law Implemented: NDCC 4.1-53-42

74-03-01-15. Misuse of certification privileges. Any seed grower, conditioner, or retailer found guilty of misusing certification tags, misrepresenting seed, or violating any of the rules governing the growing, conditioning, and marketing of foundation, registered, or certified seed, or guilty of violations of the North Dakota seed laws and rules with respect to any seed which the grower, conditioner, or retailer sells, may at the discretion of the state seed commissioner ~~or the commissioner's agents~~ be denied the right to produce, condition, or market

seed ~~under~~ for certification. Violators may be subject to fines by administrative action of the state seed department.

History: Amended effective May 1, 1986; May 1, 1988; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-42, 4.1-53-45, 4.1-53-53, 4.1-53-57

74-03-01-16. Approved conditioners. Any seed conditioner may be designated as an "approved conditioner" to condition field-inspected seed for final certification if, after inspection, it is the state seed department inspector's opinion that the facility is properly managed and equipped to maintain genetic purity and varietal identity of each seed lot. A separate inspection and permit is required for each fixed facility or mobile conditioning unit. The managers and the designated samplers in these facilities are under agreement to handle all seed and seed records and to draw representative samples of all seed lots for certification according to the certification rules and regulations.

1. Approved conditioners of small grains are required to have the following operational equipment capable of: (1) length grading - either a disc separator or indent cylinder or combination machine which removes long and short fractions and (2) width grading - either an air screen machine or precision graders with aspiration in line.

~~2. Permission to operate as an approved conditioner is granted on an annual basis. All approved conditioners must condition and complete final certification on at least one lot of certified seed every two years before renewal of a permit will be granted. A fee will be charged for each reinspection. An approved conditioner is required to have a separate inspection and permit for each fixed facility or mobile conditioning unit.~~

~~3.~~ 2. The commissioner may approve specialized equipment and facilities utilized for the purpose or repackaging, treating, or inoculating certified seed.

History: Amended effective May 1, 1986; December 18, 1989; September 1, 2002; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-42, 4.1-53-46

74-03-01-17. Interagency certification. Interagency certification is a procedure established to maintain certification eligibility of seed originating in another state.

1. ~~Upon the request of an officially recognized certification agency of another state, the state seed department will act as agent in making inspections, drawing samples, or labeling of seed to be certified.~~ **Field inspected in another state and transferred to North Dakota for final certification.**

a. North Dakota labelers may purchase seed that passed field inspection in another state and complete final certification and labeling in North Dakota. A certificate of transfer from the state in which the seed originated must be submitted to the state seed department to verify eligibility.

b. The labeler is responsible for completing final certification. If conditioning is necessary, a representative sample must be submitted to the state seed department along with a completed sampler's report and a copy of the certificate of transfer. The seed shall meet North Dakota seed standards for certification.

c. Interagency certification labels will be issued by the North Dakota state seed department.

2. ~~For certified seed carrying the certification tag or label of an official certifying agency, no official request from a recognized agency of another state is required to recondition, relabel, or rebag certified seed under interagency certification. Application for interagency certification shall be made directly to the state seed department and the following documentary evidence shall be supplied:~~ **Field inspected in North Dakota and transferred to another state for final certification.**

a. ~~Variety and kind.~~ A seed producer may transfer seed that passed field inspection in North Dakota to a purchaser in another state with approval from the state seed department. The producer must submit a completed certificate of transfer to the state seed department verifying eligibility of the seed. Once approved, the state seed department will forward copies to the purchaser and the official certification agency of the state where the seed is destined.

b. ~~Class of certified seed.~~ The purchaser is responsible for completing the requirements for certification with the certification agency.

~~c. Number of bags or bulk bushels.~~

~~d. Weight of each bag.~~

~~e. Complete original label with purity analysis, germination, and other required tests.~~

~~f. Name and address of grower or the inspection or lot number traceable to the records of the agency making the field inspections.~~

3. ~~A lot of seed that passed field inspection, or is completely certified by another officially recognized certification agency, may be sold or moved into North Dakota for further conditioning or completion of certification~~

~~provided:~~ **Certified in another state and transferred to North Dakota for relabeling.**

a. ~~Prior arrangements for moving the seed is made with and approved by the cooperating certification agency and the state seed department.~~ Seed that has been previously certified and labeled by an official certifying agency from another state may be reconditioned, rebagged, and relabeled in North Dakota.

b. ~~A grower's transfer certificate is filed by the original applicant for certification of such seed.~~ When the seed is reconditioned or rebagged, a new sample must be submitted to the state seed department for analysis. The North Dakota labeler must submit a certification label from the state or origin as proof of eligibility along with a completed sampler's report.

c. New interagency certification labels will be issued by the state seed department.

Interagency seed lots not meeting North Dakota certification standards may required resampling or retesting to ensure compliance with North Dakota certification standards.

~~4. Interagency certification tags shall show the certification agencies involved, the lot number, variety, kind, and class of seed.~~

~~5. Interagency seed lots not meeting North Dakota certification standards may require resampling or retesting to ensure compliance with North Dakota certification standards.~~

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-13, 4.1-53-42

74-03-01-18. Exclusion of warranty. Field seeds certified in accordance with this chapter have been field inspected and laboratory tested as specified in this chapter. The state seed department and inspection services function and serve only in an official regulatory manner and do not relieve the grower or owner of the grower's or owner's responsibility. Neither the producer, the seller, the North Dakota seed commission, the seed commissioner, or the commissioner's employees make any warranty or representation of any kind, express or implied, as the quantity or quality of the crop produced from certified seed, including merchantability, fitness for a particular purpose, absence of disease, or varietal or selection identity. The only representation is that the seed was inspected under the seed certification rules and regulations of the North Dakota state seed department.

Inspections, tests, certifications, and other acts are not intended to induce reliance on the state seed department's inspections, certifications, or any other

action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the seed was randomly inspected and at the time of the inspection the field or seed lot met the rules of the department.

History: Effective September 1, 2002; amended effective July 1, 2007; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-59

CHAPTER 74-03-02

74-03-02-01. Land requirements. A crop of small grain or flax will not be eligible for certification if planted on land on which the same kind was grown the year previous unless the previous crop was the same variety and was inspected for certification. A crop of winter wheat may be planted on a field that previously produced spring wheat. Foundation or registered class fields of durum will not be eligible for certification if planted on land on which spring wheat was planted either of the two previous years.

History: Amended effective May 1, 1986; January 2, 2006; July 1, 2010.
General Authority: NDCC ~~4-09-03, 4-09-05, 4-09-16~~ 4.1-53-11
Law Implemented: NDCC ~~4-09-16, 4-09-17, 4-09-18~~ 4.1-53-11, 4.1-53-42

74-03-02-02. Field inspection. All field inspection of small grain and flax will be made after the crop is fully headed or in the case of flax in bloom or in the boll stage. A field harvested before inspection will not be eligible for certification.

History: Amended effective January 2, 2006.
General Authority: NDCC ~~4-09-03, 4-09-05, 4-09-16~~ 4.1-53-11
Law Implemented: NDCC ~~4-09-16, 4-09-17, 4-09-18~~ 4.1-53-11, 4.1-53-42

74-03-02-03. Field standards.

1. **Isolation.**

   a. Prior to inspection, the field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped.

   b. All rye fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from rye fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

~~2.~~ ~~**Roguing.**~~

   ~~a. All roguing to remove undesirable plants must be done before field inspection is made. Rogued plants must be removed from the field to be harvested.~~

   ~~b. Patches of inseparable prohibited or objectionable weeds, or both, must be either removed by cutting or must be controlled by other means so that no seed is produced or harvested.~~

~~3.~~ 2. **Specific field standards(wheat - barley - oats - rye - triticale).**

	Maximum Tolerance		
Factor	Foundation	Registered	Certified
Other varieties *	1:10,000	1:5,000	1:2,000
Inseparable other crops	1:30,000	1:10,000	1:5,000
Prohibited noxious weeds **	none	none	none

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants which are characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

~~4.~~ 3. **Specific field standards (flax).**

	Maximum Tolerance		
Factor	Foundation	Registered	Certified
Other varieties *	1:10,000	1:5,000	1:2,000
Prohibited noxious weeds **	none	none	none

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-02-04. Seed standards (wheat - oats - barley - rye - triticale).

Seed count required on wheat, oats, barley, and durum.

Variety identification test required for hard red spring wheat and barley.

	Standards for Each Class		
Factor	Foundation	Registered	Certified
Pure seed (minimum) *	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum)	2 per pound	5 per pound	10 per pound
Other varieties **	1 per 2 pounds	1 per pound	3 per pound
Other crop seeds (maximum)	1 per 2 pounds	1 per pound	3 per pound

Inert matter (maximum) ***	1.0 percent	1.0 percent	1.0 percent
Prohibited noxious weed seeds +	none	none	none
Objectionable weed seeds (maximum) ++	1 per ~~4~~ 2 pounds	1 per 4 pounds	1 per pound
Germination +++	85.0 percent	85.0 percent	85.0 percent

* The standard for durum and rye shall be 98.0 percent minimum.

** Other varieties shall not include variants characteristic of the variety. White wheat must be tested for red wheat contaminants.

*** For all crops foreign matter other than broken seed shall not exceed 0.2 percent. Durum, triticale, and rye may contain 2.0 percent maximum inert matter.

\+ Including the seeds of quackgrass.

++ Objectionable weed seeds shall include the following: dodder, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), falseflax, and dragonhead.

+++ Winter wheat, durum, and rye minimum 80.0 percent.

Note: A barley labeler is responsible for having a loose smut test, by an official laboratory, on the harvested seed of each field of barley. If seed from more than one field is blended without having a test for each field, a loose smut test must be made on each seed lot or sublot. The percentage of loose smut will be printed on the certification certificate or label. The foundation class of barley has a zero tolerance for barley stripe mosaic virus.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-02-05. Seed standards (flax).

	Standards for Each Class		
Factor	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	98.5 percent
Total weed seeds (maximum)	15 per pound	15 per pound	30 per pound
Other varieties (maximum) *	~~2 per pound~~	~~8 per pound~~	~~16 per pound~~
Brown	2 per pound	8 per pound	16 per pound
Yellow	4 per pound	16 per pound	32 per pound
Other crop seeds (maximum)	2 per pound	5 per pound	10 per pound
Inert matter (maximum) **	1.0 percent	1.0 percent	1.5 percent

Prohibited noxious weed seeds ***	none	none	none
Objectionable weed seeds (maximum) +	1 per 2 pounds	1 per 2 pounds	3 per pound
Germination (minimum)	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variants characteristic of the variety. ~~For golden or yellow varieties the standards are 4, 16, and 32 per pound respectively.~~

** ~~May not exceed two-tenths percent foreign~~ Foreign matter, other than broken seed, may not exceed 0.2 percent.

*** Including seeds of quackgrass.

\+ Objectionable weed seeds shall include the following: dodder species, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), small seeded falseflax, and American dragonhead.

History: Amended effective May 1, 1986; May 1, 1987; May 1, 1988; September 1, 2002; January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-03
SPECIFIC CROP REQUIREMENTS - ALFALFA (NONHYBRID)

74-03-03-01. Land requirements. A field to be eligible for the production of foundation, registered, or certified seed must not have been in alfalfa production in the previous ~~three~~ four years, unless the field was planted to the same class or a higher class of the same variety and passed field inspection for certification in one of the three years.

History: Amended effective October 1, 2012.
General Authority: NDCC ~~4-09-03, 4-09-05, 4-09-16~~ 4.1-53-11
Law Implemented: NDCC ~~4-09-16, 4-09-17, 4-09-18~~ 4.1-53-11, 4.1-53-42

74-03-03-02. Field inspection. Field inspection prior to harvest will be required each year a seed crop is removed.

General Authority: NDCC ~~4-09-03, 4-09-05, 4-09-16~~ 4.1-53-11
Law Implemented: NDCC ~~4-09-16, 4-09-17, 4-09-18~~ 4.1-53-11, 4.1-53-42

74-03-03-03. Field standards.

1. **Age.** Production for seed certification shall be limited to fields not more than six years old, excluding the year seeded.

2. **Portion.** A portion of a field may be certified if the area to be certified is clearly defined. Portions of the field not meeting requirements for certification must not be allowed to reach the bud stage.

3. **Isolation.** A field producing foundation, registered, or certified seed must have the minimum isolation distance from fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification, as given in the following table:

Class	Fields of Less Than Five Acres	Fields of Five Acres or More
Foundation	1,320 feet	1,320 feet
Registered	660 feet	330 feet
Certified	330 feet	165 feet
Between different classes of the same variety	165 feet	165 feet

4. **Specific ~~requirements~~ field standards.**

Factor	Maximum Permitted in Each Class		
	Foundation	Registered	Certified
Other varieties *	~~0.1 percent (~~1:1,000~~)~~	~~.25 percent (~~1:400~~)~~	~~1.0 percent (~~1:100~~)~~
Sweetclover	none	5 plants per acre	25 plants per acre

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

History: Amended effective May 1, 1986; January 2, 2006; October 1, 2012.
General Authority: NDCC ~~4-09-03, 4-09-05, 4-09-16~~ 4.1-53-11
Law Implemented: NDCC ~~4-09-16, 4-09-17, 4-09-18~~ 4.1-53-11, 4.1-53-42

74-03-03-04. Seed ~~standard (alfalfa)~~ standards.

Factor	Standards for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum)	0.1 percent	0.2 percent	0.5 percent
Other varieties (maximum) *	0.1 percent	.25 percent	1.00 percent
Other crop seeds (maximum)	0.2 percent	.35 percent	1.00 percent
Sweetclover seed (maximum)	none	18 per pound	45 per pound
Inert matter (maximum)	1.0 percent	1.0 percent	1.0 percent
Prohibited noxious weed seeds **	none	none	none
Objectionable weed seeds ***	none	9 per pound	13 per pound
Germination and hard seeds (minimum)	85.0 percent	85.0 percent	85.0 percent

* Including sweetclover.

** Includes the seeds of quackgrass and dodder species.

*** Objectionable weed seeds shall include the following: wild oats, dragonhead, hedge bindweed (wild morning glory), giant ragweed (kinghead), nightflowering catchfly, hoary alyssum, white cockle, buckhorn plantain, small seeded falseflax, and dragonhead.

History: Amended effective May 1, 1986; September 1, 2002; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-07.1

74-03-07.1-01. Land requirements. A crop of buckwheat will not be eligible for certification if planted on land on which the same kind was grown the year previous unless the previous crop was ~~grown from certified seed~~ of the same variety and was inspected for certification.

History: Effective May 1, 1986; amended effective July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-07.1-02. Field inspection. All field inspection of buckwheat will be made in the bloom stage. A field harvested before inspection will not be eligible for certification.

~~1. All field inspection of buckwheat will be made in the bloom stage.~~

~~2. A field harvested before inspection will not be eligible for certification.~~

History: Effective May 1, 1986; amended effective January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-07.1-03. Field standards.

1. **Isolation.**

   a. Prior to inspection, the field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped.

   b. All buckwheat fields producing certified seed must be isolated by at least six hundred sixty feet [201.17 meters] from buckwheat fields of any other variety or fields of the same variety that do not meet the varietal purity requirements for certification.

~~2. **Roguing.**~~

   ~~a. All roguing must be done before field inspection. Rogued plants must be removed from the field to be harvested.~~

   ~~b. Patches of prohibited weeds must be either removed by cutting or must be controlled by other means so that no seed is produced.~~

~~3.~~ 2. **Specific field standards.**

	Maximum Tolerance		
Factor	Foundation	Registered	Certified
Other varieties *	1:10,000	1:5,000	1:2,000
Inseparable other crops	1:10,000	1:10,000	1:5,000
Prohibited weed seeds **	none	none	none

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Effective May 1, 1986; amended effective May 1, 1988; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-07.1-04. Seed standards.

	Standards for Each Class		
Factor	Foundation	Registered	Certified
Pure seed (minimum)	99.0 percent	99.0 percent	99.0 percent
Total weed seeds (maximum)	2 per pound	5 per pound	10 per pound
Other varieties *	1 per 2 pounds	1 per pound	3 per pound
Other crop seeds (maximum)	1 per 2 pounds	1 per pound	3 per pound
Inert matter (maximum)**	1.0 percent	1.0 percent	1.0 percent
Prohibited weed seeds ***	none	none	none
Objectionable weed seeds (maximum) ****	1 per ~~4~~ 2 pounds	1 per 2 pounds	2 per pound
Germination	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variants characteristic of the variety.

** ~~For all crops foreign~~ Foreign matter other than broken seed may not exceed 0.2 percent.

*** Including the seeds of quackgrass.

**** Objectionable weed seeds shall include the following: dodder, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), falseflax, and dragonhead.

History: Effective May 1, 1986; amended effective September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-08

74-03-08-01. Land requirements. A millet crop shall be planted on land on which the last crop grown was of another kind or was planted with ~~certified seed of~~ the same variety and ~~was~~ inspected for certification.

History: Amended effective May 1, 1986; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-09
SPECIFIC CROP REQUIREMENTS - MUSTARD, CRAMBE, CANOLA, AND RAPE (NONHYBRID)

Section

74-03-09-01. Land requirements. Foundation seed of mustard, crambe, canola, and rape shall be on land which did not produce mustard, crambe, canola, or rape during the previous ~~five~~ four years. Certified seed of mustard, crambe, canola, and rape shall be on land which did not produce mustard, crambe, canola, or rape during the previous ~~three~~ two years. Registered and certified seed of crambe must be on land which did not produce crambe during the previous ~~three years~~ year.

History: Amended effective December 18, 1989; September 1, 2002; October 1, 2012.
General Authority: NDCC ~~4-09-03, 4-09-05, 4-09-16~~ 4.1-53-11
Law Implemented: NDCC ~~4-09-16, 4-09-17, 4-09-18~~ 4.1-53-11, 4.1-53-42

CHAPTER 74-03-09.1
SPECIFIC CROP REQUIREMENTS - HYBRID CANOLA AND RAPESEED

74-03-09.1-01. Land requirements. Crops for production of foundation seed must not be planted on land that has grown canola, rapeseed, or mustard or oilseed radish during the preceding five years. Crops for production of certified seed must not be planted on land that has grown canola, rapeseed, or mustard or oilseed radish during the preceding three years.

History: Effective October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-09.1-02. Seed requirements. Only the certified class is recognized in the production of commercial hybrid seed. Breeder or foundation seed must be used to establish all fields of hybrid canola or rapeseed for certification.

History: Effective October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-09.1-03. Field inspection. Field inspection shall be made when the seed parent is in early bloom. Additional inspections may be required.

History: Effective October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-09.1-04. Field standards.

1. **General.**

   a. Isolation. A field producing foundation or certified seed must be isolated by a minimum of 2,640 feet from any other canola or rapeseed.

   b. Unit of certification. The entire field is the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion does not affect the genetic purity of the portion accepted.

2. **Specific field standards.**

	Maximum Permitted in Each Class	
Factor	Foundation	Certified
Other varieties *	1:2,000	1:500
Inseparable other crops	1:2,000	1:500

* Other varieties include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

History: Effective October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-09.1-05. Seed standards.

Factor	Foundation	Registered Crambe Only	Certified
Pure seed (minimum)+	99.00 percent	99.00 percent	99.00 percent
Inert matter (maximum)	1.00 percent	1.00 percent	1.00 percent
Prohibited noxious weed seeds *	none	none	none
Objectionable weed seeds **	1 per pound	3 per pound	5 per pound
Other weeds	5 per pound	10 per pound	15 per pound
Total other crop seeds (maximum)	0.05 percent	0.10 percent	0.25 percent
Other varieties (maximum)	0.05 percent	0.10 percent	0.25 percent
Other kinds (maximum) ***	0.01 percent	0.01 percent	0.01 percent
Germination (minimum)	85.00 percent	85.00 percent	85.00 percent
Sclerotia (maximum)	7 per pound	7 per pound	7 per pound

\+ Percent hybrid seed shall not be less than eighty percent. A certificate from an accredited laboratory indicating the percentage of hybridity must be submitted prior to final certification.

A certificate from an accredited laboratory indicating satisfaction erucic acid and glucosinolate content may be required prior to final certification.

* Prohibited noxious weed seeds include the seeds of cleavers or bedstraw.

** Objectionable weed seeds are dodder, wild mustard, wild oats, quackgrass, and hedge bindweed (wild morning glory).

*** Shall not exceed one per pound for foundation and six per pound for certified.

History: Effective October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-10
SPECIFIC CROP REQUIREMENTS - SAFFLOWER

74-03-10-03. Field standards.

1. ~~**General**~~ **Isolation.** Fields of safflower planted to produce the registered or certified class of seed shall be at least one thousand three hundred twenty feet [402.34 meters] from any other variety or noncertified field of safflower. When certified classes of seed of the same variety are planted in close proximity, no isolation requirement applies, except to maintain field borders.

   ~~a. Isolation.~~

   ~~b. Unit of certification. The field is the unit of certification. A portion of a field may be accepted for certification provided that the rejected portion in no way impairs the genetic purity of the portion accepted.~~

   ~~c. Roguing. Off-type plants or identifiable mixtures shall be removed from the field before pollination occurs.~~

2. **Specific field standards.**

	Maximum Permitted in Each Class		
Factor	Foundation	Registered	Certified
Other varieties *	1:5,000	1:2,000	1:1,000
Inseparable other crops	1:30,000	1:10,000	1:3,000
Prohibited noxious weeds**	none	none	none

* Other varieties shall include plants that can be differentiated from the variety being inspected, but shall not include variants characteristic of the variety.

** The tolerance for prohibited or objectionable weeds, or both, in the field will be determined by the inspector.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-10-04. Seed standards ~~(safflower)~~.

Factor	Foundation	Registered	Certified
Pure seed (minimum)	98.0 percent	98.0 percent	98.0 percent
Inert matter (maximum)	2.0 percent	2.0 percent	2.0 percent
Other crops or varieties (maximum)	1 per 2 pounds	1 per pound	3 per pound
Weed seeds (maximum)	2 per pound	5 per pound	10 per pound
Prohibited noxious weed seed *	none	none	none
Objectionable weed seeds**	~~none~~ 1 per 2 pounds	1 per 2 pounds	2 per pound
Germination (minimum)		80 percent	80 percent
Sclerotia (maximum)	5 per pound	5 per pound	5 per pound

* Including the seeds of quackgrass.

** Objectionable weed seeds shall include the following: dodder, wild oats, hedge bindweed (wild morning glory), giant ragweed (kinghead), falseflax, and dragonhead.

History: Amended effective May 1, 1986; September 1, 2002; January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-11
SPECIFIC CROP REQUIREMENTS - SUNFLOWER

74-03-11-02. Field inspection. ~~Open pollinated varieties, hybrids and inbreds.~~

1. **Open pollinated ~~inspections~~ production.**

   a. The first inspection shall be made prior to the bloom stage.

   b. The second inspection shall be made after the crop is at least fifty percent in bloom and before it is fully matured.

2. **Hybrid and inbred production.**

   a. At least three field inspections shall be made, one during the bud to early bloom stage and two during bloom.

   b. In a field producing hybrid sunflower seed, at least fifty percent of the male parent plants must be in bloom and producing pollen at the time the female parent is in full bloom. The heads of female plants shedding pollen must be removed and disposed of in a manner which will prevent their pollen from being disseminated. Off-type male plants shall be removed from the field before pollination.

   c. The field shall be considered the unit for certification. Fields shall be separated from other inseparable crops by a distance adequate to prevent mechanical mixture and from other sunflowers by five thousand two hundred eighty feet [1609.34 meters].

   d. In inbred lines and foundation single crosses only the foundation class shall be recognized. In hybrid varieties only the certified class shall be recognized.

3. **Diseases.** Standards for seed-borne diseases in sunflowers are not specified; however, the inspector may reject fields for disease if the quality of the seed will be affected.

History: Amended effective May 1, 1986; May 1, 1988; January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-11-05.1. Seed standards ~~(sunflower)~~.

	Standards for Each Class		
Factor	Foundation	Registered	Certified
Pure seed (minimum)	98.0 percent	98.0 percent	98.0 percent
Total weed seeds (maximum)	none	none	3 per pound
Other varieties (maximum) *	1 per pound	1 per pound	5 per pound
Other crop seeds (maximum)	1 per pound	1 per pound	3 per pound
Inert matter (maximum)	2.0 percent	2.0 percent	2.0 percent
Objectionable weed seeds **	none	none	none
Prohibited noxious weed seeds	none	none	none
Germination (minimum)	85.0 percent	85.0 percent	85.0 percent
Sclerotia	5 per pound	5 per pound	5 per pound

* To include not more than two purple seeds or two white seeds per pound. Other varieties shall not include variants characteristic of the variety.

** Objectionable weed seeds shall include the following: buckhorn plantain, dodder, wild oats, nightflowering catchfly, giant foxtail, hoary alyssum, horsenettle, quackgrass, wild vetch species, wild radish, hedge bindweed (wild morning glory), and nightshade.

History: Effective May 1, 1988; amended effective September 1, 2002; January 2, 2006; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-12

74-03-12-04. Seed standards.

Seed count required on soybeans, chickpeas, and lentils.

	Standard for Each Class		
Factor	Foundation	Registered	Certified
Pure seed (minimum)	98.0 percent	98.0 percent	98.0 percent
Total weed seeds (maximum)	none	1 per pound	2 per pound
Other varieties (maximum) *	0.1 percent	0.2 percent	0.2 percent
Other crop seeds (maximum)			
Soybeans and chickpeas	none	1 per 2 pounds	1 per pound
Lentils	1 per 2 pounds	1 per pound	3 per pound
Inert matter	2.0 percent	2.0 percent	2.0 percent
Prohibited noxious weed seeds	none	none	none
Objectionable weed seeds **	none	none	none
Germination and hard seeds	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variants characteristic of the variety.

** Objectionable weed seeds are dodder, hedge bindweed (wild morning glory), wild oats, buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

Chickpea and lentil seed labelers shall have an ~~aschochyta~~ ascochyta test performed on the harvested seed of each field or lot. The test results shall appear on the label for each seed lot.

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-12.1-04. Seed standards.

Seed count and variety identification tests required on field peas.

Factor	Standard for Each Class		
	Foundation	Registered	Certified
Pure seed (minimum)	98.0 percent	98.0 percent	98.0 percent
Total weed seeds (maximum)	none	1 per pound	2 per pound
Other varieties (maximum) *	0.1 percent	0.2 percent	0.2 percent
Other crop seeds (maximum)	none	1 per 2 pounds	1 per pound
Inert matter	2.0 percent	2.0 percent	2.0 percent
Prohibited noxious weed seeds	none	none	none
Objectionable weed seeds **	none	none	none
Germination and hard seeds	85.0 percent	85.0 percent	85.0 percent

* Other varieties shall not include variants characteristic of the variety.

** Objectionable weed seeds are dodder, hedge bindweed (wild morning glory), wild oats, buckhorn, hoary alyssum, horsenettle, quackgrass, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

History: Effective July 1, 2010; amended effective October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-03-13

74-03-13-01. Land requirements. A crop will not be eligible for certification if planted on land that was in any class of dry field beans or green beans the preceding two years or soybeans the preceding year. ~~Poor stands, poor vigor, lack of uniformity, excess weeds, or conditions which are apt to make inspection inaccurate or bring certified seed into disfavor shall be cause for rejection.~~

History: Amended effective May 1, 1986; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-13-03. Field standards.

1. **Isolation.** Prior to inspection, a field must be isolated from inseparable crops by a fence row, natural boundary, or by a strip of at least five feet [1.52 meters] wide which is either mowed, sprayed, or uncropped.

2. **Specific field standards.**

	Maximum Tolerance		
Factor	Foundation	Registered	Certified
Other varieties or classes *	.01 percent	0.05 percent	0.1 percent
Inseparable other crops	none	none	none
Prohibited noxious weeds **	none	none	none
Objectionable weeds ***	none	none	none
Bacterial bean blights +	.01 percent	.05 percent	.1 percent
Anthracnose	none	none	none
Wilt	none	none	none
Common bean mosaic	none	0.5 percent	1.0 percent

* Other varieties shall not include variants characteristic of the variety.

** Prohibited noxious weeds include only field bindweed, leafy spurge, yellow starthistle, and Russian knapweed. The tolerance for prohibited or objectionable weeds, or both, will be determined by the inspector.

*** Objectionable weeds include nightshade species and cocklebur.

\+ 1. The grower shall isolate and not ~~thresh~~ harvest within a one hundred-foot [30.5-meter] radius of all staked (flagged) plants. A grower must leave in place any stakes or flags by plants with blight-infected pods. The inspector may recheck the field to ensure that these blighted areas were not harvested. Failure to leave the rejected area will result in total field being rejected.

2. Areas to be isolated must be mapped out on field inspection report.

~~3. In any case, it is important that blighted areas be clearly defined by flags. These blighted areas must be left unthreshed while the rest of the field is threshed. The inspector may recheck the field to ensure that these blighted areas were indeed left. Failure to leave the rejected area will result in total field being rejected.~~

History: Amended effective May 1, 1986; May 1, 1988; December 18, 1989; August 1, 1991; September 1, 2002; January 1, 2005; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

74-03-13-04. Seed standards.

Seed count required on dry field beans.

	Standards for Each Class		
Factor	Foundation	Registered	Certified
Pure seed (minimum)	98.5 percent	98.5 percent	98.5 percent
Inert matter (maximum)*	1.5 percent	1.5 percent	1.5 percent
Total weed seeds (maximum)	none	none	2 per pound
Other varieties or classes	0.01 percent	0.05 percent	0.1 percent
Other crops (maximum)	none	none	1 per 2 pounds
Prohibited noxious weed seeds	none	none	none
Objectionable weed seeds**	none	none	none
Germination (minimum)	no standard	85.0 percent	85.0 percent
Bacterial blight test***	pass	pass	pass
Anthracnose***	none	none	none

* Foreign matter other than broken seed may not exceed 0.50 percent.

** Objectionable weed seeds include those of buckhorn, dodder, hedge bindweed (wild morning glory), hoary alyssum, horsenettle, quackgrass, wild oats, wild vetch species, giant foxtail, wild radish, nightshade species, and cocklebur.

*** The grower is responsible for having a bacterial blight test and anthracnose test, performed by a seed department-approved laboratory, on the harvested seed of each field ~~or seed lot~~ of dry field beans. If seed from more than one field is ~~blended or~~ commingled prior to testing, a bacterial blight test and anthracnose test must be performed on each separate seed lot ~~or sublot~~. Lot size is restricted to two thousand bushels.

A seed treatment to reduce surface bacterial contamination of the seed coat is recommended.

History: Amended effective May 1, 1986; December 18, 1989; August 1, 1991; September 1, 2002; January 2, 2006; July 1, 2010; October 1, 2012.
General Authority: NDCC 4.1-53-11
Law Implemented: NDCC 4.1-53-11, 4.1-53-42

CHAPTER 74-04-01

74-04-01-02. General requirements and responsibilities.

1. Participation and responsibility.

   a. Participation in this seed potato program is voluntary and may be withdrawn prior to the first inspection.

   b. Responsibilities.

      (1) Seed department responsibilities. The inspections, approvals, certification, and production of these rules and regulations will be done by the state seed department.

      (2) Applicants' responsibilities. The farming, sanitation practices, storing, and packing will be the grower's responsibility. It is the responsibility of the applicant to maintain genetic purity and identity at all stages of certification, including planting, harvesting, storing, and handling. Evidence that any lot of seed has not been protected from contamination that might affect genetic purity or is not properly identified shall be cause for possible rejection of certification.

2. General requirements.

   a. Potatoes to be eligible for the program shall have been in a certification program and winter tested for eligibility.

   b. Fields will pass two or more inspections given by visual examination of a representative sample of the plants which method and size of sample will be determined by the state seed department.

   c. Fields passing inspection will be stored in a seed warehouse and sorted to grade at shipping time.

   d. Responsibility for the quality of work done in sorting the potatoes falls upon the grower or a thoroughly qualified agent authorized by the grower.

   e. Requirements for certification are not complete on any lot of eligible potatoes until properly ~~tagged~~ labeled as described in this chapter and an official seed grade inspection certificate has been issued. Official labels will be provided to the grower by the state seed department in hard copy or electronic form. Official seed grade inspections are compulsory for seed shipped ~~interstate~~ out of state. Grade inspection ~~will be~~ is voluntary for intrastate shipments. For

those shipments that are not inspected, or that fail to meet grade standards described in section 74-04-01-11, the label must state "not grade".

f. The responsibility for properly and accurately labeling foundation or certified seed rests with the grower of the seed. The ~~official tags or bulk certificates~~ labels will be issued to the purchaser only on order or authorization from the grower, who must provide to the purchaser a proper and accurate label for each container or load of seed at the time of delivery. These ~~tags or bulk certificates~~ labels are to accompany the potatoes at shipment. Labels must not be applied to stock other than that indicated on the tags or bulk certificates. Bulk shipments, by truck or railcar, when thoroughly disinfected, may be considered the container. ~~Excess labels must be returned to the seed department.~~

g. Resorting or regrading. If a lot of potatoes fails to meet certified seed grade requirement upon inspection, they are to be reconditioned to meet the requirement or the official ~~tags~~ labels must be removed.

h. Reconditioning while in transit. In the case of any circumstance making it essential to recondition seed in transit, permission must be obtained from the state seed department.

i. Latent virus testing. Serological testing for latent viruses shall be voluntary and a requirement for only virus-tested seed. Virus-tested seed meeting established tolerances may be indicated on the ~~tag~~ label.

j. Upon the discretion of the state seed department, potato seed lots originating from out of state may be subjected to a laboratory test, by a seed department-approved laboratory, for the detection of seedborne pathogens. Eligibility for recertification of any seed lot so tested must be based on that laboratory test. Additional documentation, including health certificates or summer or winter, or both, field readings, may be required by the seed department prior to acceptance for recertification in this state.

k. Failure to comply with any of the requirements of this chapter may be cause for rejection or cancellation of the lot or the certification of any seed as seed potatoes.

3. No person may disclaim responsibility of the vendor of the seed for the data or information on the label required by law and any such disclaimer of vendor’s express or implied warranty is invalid.

4. Violations. The state law specifically states the use of the term "certified" or the term "registered" or any term or terms conveying a meaning

substantially equivalent to the meaning of any said terms, either orally or in writing, printing, marking, or otherwise in reference to or in connection with or in advertising or characterizing or labeling seed potatoes or the containers thereof is prohibited, unless such potatoes shall have been duly inspected and certified pursuant to the provisions of the law. Any violation of this law and any person on conviction thereof, shall be fined not more than one hundred dollars and cost for first offense and not more than five hundred dollars and costs of prosecution for subsequent offenses.

History: Amended effective December 1, 1981; June 1, 1992; January 2, 2006; July 1, 2007; October 1, 2012.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-08. Field inspection standards.

1. Each seed potato field will be visually inspected based on sample inspection. The method of inspection and sample size will be at the discretion of the state seed department but a minimum of one hundred plants per acre [.40 hectare] will be inspected. For varieties that do not express readily visible symptoms of a disease, laboratory testing may be done for the pathogen.

2. The field tolerance established will be based on visible symptoms in the samples inspected. Diseases which cannot be observed visually may be present.

	First Inspection Tolerances (%) Foundation Class Generation						Certified Class Generation
	0	1	2	3	4	5	0-6
Varietal mixture	0.1	0.2	0.3	0.5	0.5	0.5	0.5
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Severe mosaics (PVY)	0.2	0.3	0.4	0.5	0.5	0.5	1.0
Leaf roll (PLRV)	0.2	0.3	0.4	0.5	0.5	0.5	1.0
Total serious virus	0.2	0.3	0.4	0.5	0.5	0.5	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

	Second and All Subsequent Inspections Tolerances (%) Foundation Class Generation						Certified Class Generation
	0	1	2	3	4	5	0-6
Varietal mixture	0.1	0.1	0.2	0.3	0.3	0.3	0.3
Spindle tuber viroid	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Severe mosaics (PVY)	0.0	0.1	0.2	0.3	0.3	0.3	1.0
Leaf roll (PLRV)	0.0	0.1	0.2	0.3	0.3	0.3	1.0
Total serious virus	0.0	0.1	0.2	0.3	0.3	0.3	1.0
*Bacterial ring rot	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Late blight found during field inspection must be confirmed by symptoms or laboratory diagnosis before being reported on the inspection report.

* The zero tolerance means that no amount is permissible when inspected. It does not mean that the seed is absolutely free of disease or disease-causing agents, but that none was found during inspection.

Varieties that do not express visible disease symptoms. Potato varieties that do not express visible disease symptoms of a specific pathogen may be subjected to a laboratory test to determine the levels of the pathogen in a seed lot. This testing may occur during the growing season or during the winter test, or both, and may affect eligibility of the seed lot.

Ring rot. Seed fields will be subject to a third (final) field inspection focused primarily on inspection for symptoms related to ring rot. If the field has not received a third inspection, the grower will be required to submit a four hundred tuber sample (minimum) per field for laboratory testing.

Blackleg. Since the blackleg disease may be latent, the inspector will record only the percentage observed during the first and second inspection, and no tolerance will be established. However, any excessive amount can be cause for rejection. Blackleg observations shall be based upon sample plants exhibiting the characteristic black, inky, soft, slimy, decomposed tissue of the stem.

Wilt. Only the percentage noted will be recorded on the first and second inspection, and may include other factors such as maturity, drought, or alkali problems but any excessive amount may be cause for rejection.

There will be zero tolerance for potato wart, corky ring spot, gangrene, golden nematode, root knot nematode, tuber moths, or other such injurious pests that have never been found and confirmed in North Dakota seed potato fields.

Tolerances for potato virus x tested seed. All of the above tolerances will apply, including a requirement that bacterial ring rot must not have been found on the farm during the season. Seed lots with no more than two percent potato virus x infection may be identified as virus x tested on certification ~~tags~~ labels.

3. Field conditions.

   a. Insect control must be maintained early and until the vines are killed or matured. Fields suffering excessive insect injury may be disqualified for certification. A grower will notify the inspector of the date of spraying and spray material applied.

b. Vine killing. If a field has not received final inspection, the grower must obtain approval from the inspector before killing the vines. Furthermore, if the inspector deems it appropriate, a laboratory test may be required or strips of unkilled vines must be left in the seed fields to facilitate final inspections, or both. When strips are left for inspection, the first twelve rows (if a six-row planter was used, eight rows if a four-row planter was used) must not be vine-killed. It will be the responsibility of the seed producer to identify where seed planting began. Approximately ten percent of the seed field acreage must be left in strips.

c. Any condition such as excess weeds, hail injury, foreign plants, chemical damage, soil conditions, or insect damage that interferes with proper inspection may disqualify the seed for certification.

d. Roguing is permitted and recommended in many cases but must be done before the inspector arrives in the field.

e. Presence of disease or conditions not mentioned heretofore which may impair seed quality shall constitute cause for rejection or additional testing before final certification. Stocks which show an excessive percentage of total serious virus in official postharvest tests shall be considered ineligible for certification ~~tags~~.

4. Appeal. Inspection of rejected fields will be considered, provided application is made within three days after rejection, the field is in good condition for inspection, and no additional roguing is done prior to reinspection.

5. Bacterial ring rot control.

a. All seed produced by a farming operation in which bacterial ring rot has been found will be ineligible for recertification the following year.

b. If the farming operation is found to be infected, all equipment and storages must be cleaned and disinfected.

c. A farming operation found to be infected on three consecutive years shall be required to purchase all new seed, clean, and disinfect the operation under the supervision of the state seed department before entering any seed for certification.

6. The variety name stated on the application will be the standard for inspection when entering the field. Absent compelling visual evidence to the contrary, the variety or selection declared by the grower will be presumed correct if the documentation provided is valid and the variety description characteristics meet the requirements of the chapter.

7. Inspections, tests, certifications, and other acts are not intended to induce reliance on the seed department's inspections, certifications, or any other action or inaction for any purpose relating to quantity or quality of the seed or crop produced, fitness for purpose, merchantability, absence of disease, or variety or selection identification. Certification means only that the potatoes were randomly inspected, and at the time of the inspection the field or seed lot met the rules of the department.

History: Effective December 1, 1981; amended effective June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-09. Postharvest testing program.

1. All foundation and basic seed potato fields must be randomly sampled and tested if the grower intends to plant the same seed lot or sell to growers who intend to enter the lot for certification the following year. Only seed lots with three-tenths of one percent total serious virus or less during field inspections are eligible for postharvest testing.

2. The results will be based on visible inspection of the plants for virus or viruslike symptoms from the sample the grower submitted. However, laboratory testing may be used on varieties that have slight or latent symptoms.

3. Other factors such as vigor, other diseases, and any factor that might impair seed quality will be considered in the postharvest testing program.

4. Information concerning sample size and time to submit samples will be available from the state seed department.

5. Lots failing the postharvest test will be ineligible for planting in the certification program.

6. In the event of frost or other serious malfunctions of the postharvest grow-out test, eligibility of a seed lot will be based on the current field readings or a laboratory test at the discretion of the state seed department.

7. Seed lots showing excessive amounts of virus in the postharvest test may be disqualified for ~~tags or~~ final certification. The level at which to disqualify the lot will be established by the seed commissioner.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; January 2, 2006; October 1, 2012.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-10. Storage and packaging requirements.

1. A storage to be eligible must have been cleaned and disinfected prior to harvest. Storages not previously used for certified seed must be inspected by the state seed department.

2. Seed potatoes to be eligible for final certification ~~tags~~ must be stored in a warehouse containing only seed potatoes which have been field-inspected. Such warehouses may contain field-inspected stocks rejected for seed certification for causes other than such diseases as ring rot.

3. Equipment for handling, sorting, or grading can be used only on certified stock, but also must be cleaned and disinfected.

4. Containers.

   a. Graded stocks must be placed in new sacks ~~or in~~, clean crates, totes, or bulk containers which are ~~tagged or marked~~ labeled in an approved manner to indicate the lot contains certified seed potatoes.

   b. Brands or markings must feature "North Dakota" as the production area.

   c. No used bags may be brought into the farming operation.

   d. It is highly recommended that all containers be disinfected for the grower's own protection.

5. Out-of-state storage. Growers, upon special application, may be permitted final certification on eligible stocks in approved nearby storages outside the state.

6. Bin inspection. Certified storages may be checked by an authorized inspector during the storage season.

7. Yield and storage reports. Before ~~tags~~ labels will be issued for a lot of potatoes, a report will be given to the state seed department stating yield of each field entered for certification and the location of the storages.

8. Transfers of seed potatoes to other parties. A lot of seed potatoes eligible for final certification may be transferred to another party along with ~~tags~~ labels provided authorization is given by the state seed department and the grower.

9. Each bin containing certified seed potatoes must be plainly labeled for certification with the grower's name and address, hundredweight [45.36 kilograms] or bushels [35.24 liters], variety, and field identification.

10. All basic and foundation seed lots and other seed lots intended for recertification must be stored in identifiable, clearly separated bins. Bins containing two or more seed lots of a variety without a divider or some other method of separation will be downgraded to the appropriate generation or disease tolerance level.

History: Effective December 1, 1981; amended effective December 1, 1987; June 1, 1992; September 1, 1997; October 1, 2012.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

74-04-01-11. Official North Dakota seed potato grades. Final grade determination shall be made based on physical defects, size, shape, and cleanliness. The potatoes will be packed in new ~~burlap~~ sacks, totes, or clean, disinfected containers identified by ~~official tags attached~~ labels as to variety, crop year, and grower and accompanied by an official state or federal grade certificate. United States department of agriculture revised standards, effective March ~~2010~~ 2012, for seed potatoes shall be the official guide for applying and interpreting all definitions and terms used in North Dakota seed potato grades. Grade inspection will be made on a sample basis.

1. First grade blue tag seed potatoes shall consist of unwashed potatoes of one variety which must meet the following requirements:

   a. Shape. Fairly well-shaped except for long varieties.

      (1) Dryland type (see definitions section 74-04-01-01).

      (2) Except for shape (see definitions section 74-04-01-01).

   b. Free from:

      (1) Freezing injury.

      (2) Blackheart.

      (3) Soft rot and wet breakdown.

      (4) Late blight tuber rot.

(5) Bacterial ring rot.

(6) Nematode or tuber moth injury.

(7) Fresh cuts or fresh broken-off second growth.

c. Free from serious damage caused by:

(1) Hollow heart.

(2) Vascular ring discoloration.

(3) Wireworm.

(4) Growth cracks.

d. Free from damage by soil and other causes (see definitions section 74-04-01-01 and classification of defects, section 6, tables I and II of section 74-04-01-11).

e. Size:

(1) Minimum size, unless otherwise specified, must be one and one-half inches [38.1 millimeters] in diameter.

(2) Maximum size may not exceed twelve ounces [340.2 grams] for round-shaped or intermediate-shaped varieties and fourteen ounces [396.9 grams] for long varieties.

(3) For all varieties, size B must be from one and one-half inches [38.1 millimeters] to not more than two and one-quarter inches [57.1 millimeters] in diameter.

f. Tolerances. In order to allow for variations incident to proper grading and handling in the foregoing grade, the following tolerances, by weight, are provided as specified:

(1) For defects:

(a) Ten percent for potatoes in any lot which are seriously damaged by hollow heart.

(b) Ten percent for potatoes in any lot which are damaged by soil. (see definitions section 74-04-01-01).

(c) Five percent for potatoes in any lot which are seriously damaged by vascular ring discoloration.

(d) Potatoes affected by silver scurf are not grade factors.

(e) Not more than ten percent of the potatoes seriously damaged by wireworm.

(f) Eleven percent for potatoes which fail to meet the remaining requirements of grade, including therein not more than six percent for external defects and not more than five percent for internal defects; provided that included in these tolerances not more than the following percentages shall be allowed for the defects listed:

	Percent
Bacterial ring rot	0.00
Late blight tuber rot	1.00
Damage by dry-type or moist-type fusarium tuber rot	2.00
Nematode or tuber moth injury	0.00
Frozen, soft rot, or wet breakdown	0.50
Varietal mixture	0.50

(2) For off-size:

(a) Undersize. Five percent for potatoes in any lot which fail to meet the required or specified minimum size.

(b) Oversize. Ten percent for potatoes in any lot which fail to meet the required or specified maximum size.

2. Second grade yellow tag potatoes shall consist of unwashed potatoes that meet the requirements for blue tag grade except for defects caused by hollow heart, wireworm, internal discoloration, firmness, sprouts, and sunken, flattened, or depressed areas with or without underlying flesh discolored, and are not seriously damaged by soil and for increase in maximum size, and for increased tolerance for defects listed below:

Tolerances.

a. For defects:

(1) Twenty percent for potatoes seriously damaged by hollow heart.

(2) Firmness, sprouts, wireworm, internal discoloration, sunken, flattened, or depressed areas with or without underlying flesh discolored and growth cracks are not grade factors.

(3) Twenty percent for potatoes which fail to meet the remaining requirements of the grade; provided, that included in this

amount not more than six percent shall be seriously damaged and included therein not more than one-half of one percent shall be allowed for potatoes which are frozen or affected by soft rot or wet breakdown.

b. Size. Maximum size, unless otherwise specified may not exceed fourteen ounces [396.90 grams] for round-shaped or intermediate-shaped varieties and sixteen ounces [453.60 grams] for long varieties.

3. White tag. The white tag North Dakota-certified seed potato grade shall consist of certified seed potatoes of one variety that are graded according to agreement between the seller and the purchaser as to size and defects, except that not more than one-half percent of soft rot, fozen, or wet breakdown and two percent dry rot, of which not more than one percent late blight tuber rot is allowed. Import requirements may be considered an agreement. The official label must be used and marked as white tag.

4. The blue tag, yellow tag, or white tag grade designation may not be used on the official label unless the seed has been grade inspected. Noninspected seed must be labeled "no grade".

~~4.~~ 5. Application of tolerances. Individual samples may not have more than double the tolerances specified, except that at least one defective and one off-size potato may be permitted in any sample; provided that en route or at destination, one-tenth of the samples may contain three times the tolerance permitted for potatoes which are frozen or affected by soft rot or wet breakdown; and provided, further, that the averages for the entire lot are within the tolerances specified for the grade.

~~5.~~ 6. Samples for grade and size determination. Individual samples shall consist of at least twenty pounds [9.06 kilograms]. The number of such individual samples drawn for grade and size determination will vary with the size of the lot.

~~6.~~ 7. Classification of defects.

a. Brown discoloration following skinning, dried stems, flattened depressed areas (showing no underlying flesh discoloration), greening, skin checks, and sunburn do not affect seed quality and may not be scored against the grade.

b. Table I - External defects.

DAMAGE			
Defect	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the total weight of the potato
Air cracks			x
Bruises			x
Cuts and broken-off second growth (healed)	x		x
Elephant hide (scaling)	x		
Enlarged, discolored, or sunken lenticels	x		
Folded ends	x		
Second growth	x		
Shriveling	When more than moderately shriveled, spongy, or flabby.		
Sprouts	When more than 20 percent of the potatoes in any lot have any sprout more than 1 inch [25.4 millimeters] in length.		
Surface cracking	x		x
Flea beetle injury	x		x
Grub damage	x		x
Rodent and/or bird damage	x		x
Wireworm or grass damage	Any hole more than 3/4 inch [19.1 millimeters] long or when the aggregate length of all holes is more than 1 1/4 inches [31.8 millimeters][1].		
Dry-type or moist-type fusarium rot			x
Rhizoctonia	x		
Scab, pitted	x		x
Scab, russet	When affecting more than 1/3 of the surface.		
Scab, all surface	When affecting more than 5 percent of the surface.		

Growth cracks	When seriously detracting from the appearance.	
Pressure bruises and sunken areas with underlying flesh discolored		When removal causes a loss of more than 10 percent of the total weight.

[1] Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

c. Table II - Internal defects.

	DAMAGE			
	Defect	When materially detracting from the appearance of the potato	OR	When removal causes a loss of more than 5 percent of the total weight of the potato
	Ingrown sprouts			x
	Internal discoloration occurring interior to the vascular ring (such as, internal brown spot, mahogany browning, and heat necrosis).	When more than the equivalent of three scattered light brown spots 1/8 inch [3.2 millimeters] in diameter[1].		
	All other internal discoloration, excluding discoloration confined to the vascular ring.			x
	SERIOUS DAMAGE			
	Defect	When seriously detracting from the appearance of the potato	OR	When removal causes a loss of more than 10 percent of the total weight of the potato
	Internal discoloration confined to the vascular ring.			x
	Hollow heart or hollow heart with discoloration.	When affected area exceeds that of a circle 3/4 inch [19.1 millimeters] in diameter[1].		

[1] Definitions of damage and serious damage are based on potatoes that are two and one-half inches [63.5 millimeters] in diameter or six ounces [170.10 grams] in weight. Correspondingly lesser or greater areas are permitted on smaller or larger potatoes.

~~7.~~ 8. Classification and serologically tested stocks.

a. Foundation seed classification may be indicated on the ~~tag~~ lab provided the lot meets foundation standards.

b. Serologically tested stocks for potato virus x, potato virus s, potato virus y, potato virus a, or potato virus m may be so indicated on the ~~tag~~ label if within the specified tolerance during the current growing season.

~~8.~~ 9. Grade inspections are not intended to induce growers' or producers' reliance regarding the presence or absence of disease, the identity of the variety or selection, quantity, or quality of the seed or crop produced or the fitness of the seed.

Blue ~~and~~ tag, yellow tag, and white tag shipments must be inspected and meet respective grade requirements.

History: Effective December 1, 1981; amended effective June 1, 1985; December 1, 1987; June 1, 1992; September 1, 1997; July 16, 2001; September 1, 2002; January 2, 2006; July 1, 2007; July 1, 2010; October 1, 2012.
General Authority: NDCC 4-10-03
Law Implemented: NDCC 4-10-04

TITLE 75

DEPARTMENT OF HUMAN SERVICES

OCTOBER 2012

CHAPTER 75-02-02
MEDICAL SERVICES

75-02-02-20 Income Levels and Application [Repealed]
75-02-02-21 Property Resource Limits [Repealed]
75-02-02-22 Exempt Property Resources [Repealed]
75-02-02-23 Excluded Property Resources [Repealed]
75-02-02-24 Contractual Rights to Receive Money Payments [Repealed]
75-02-02-25 Disqualifying Transfers [Repealed]
75-02-02-26 Eligibility Under 1972 State Plan [Repealed]
75-02-02-27 Scope of Drug Benefits - Prior Authorization
75-02-02-28 Drug Use Review Board~~, Grievances,~~ and Appeals
75-02-02-29 Primary Care Provider

75-02-02-01. Purpose. Repealed effective December 1, 1991, unless chapter 75-02-02.1 is appealed pursuant to section 27 of 1991 House Bill No. 1194 and is not affirmed.

75-02-02-03.2. Definitions. For purposes of this chapter:

1. "Certification of need" means a regulatory review process that requires specific health care providers to obtain prior authorization for provision of services for medicaid applicants or eligible recipients under twenty-one years of age. Certification of need ~~applications are~~ is a determination of the medical necessity of the proposed services as required for all ~~residential treatment center~~ applicants or recipients ~~of~~ under the age of twenty-one prior to admission to a psychiatric hospital ~~or~~, an inpatient psychiatric program in a hospital ~~and~~, or a psychiatric facility, including a psychiatric residential treatment ~~centers to determine the medical necessity of the proposed services~~ facility. The certification of need evaluates the ~~recipient's~~ individual's capacity to benefit from proposed services, the efficacy of proposed services, and consideration of the availability of less restrictive services to meet the individual's needs.

2. "County agency" means the county social service board.

3. "Department" means the North Dakota department of human services.

4. "Drug use review board" means the board established pursuant to North Dakota Century Code chapter 50-24.6.

5. "Home health agency" means a public or private agency or organization, or a subdivision of such an agency or organization, which is qualified to participate as a home health agency under title XVIII of the Social Security Act, or is determined currently to meet the requirements for participation.

6. "Licensed practitioner" means an individual other than a physician who is licensed or otherwise authorized by the state to provide health care services within the practitioner's scope of practice.

~~6.~~ 7. "Medical emergency" means a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson acting reasonably and possessing an average knowledge of health and medicine to believe that the absence of immediate medical attention could reasonably be expected to result in serious impairment to bodily function, serious dysfunction of any bodily organ or part, or would place the person's health, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy.

~~7.~~ 8. "Medically necessary" includes only medical or remedial services or supplies required for treatment of illness, injury, diseased condition, or impairment; consistent with the patient's diagnosis or symptoms; appropriate according to generally accepted standards of medical practice; not provided only as a convenience to the patient or provider; not investigational, experimental, or unproven; clinically appropriate in terms of scope, duration, intensity, and site; and provided at the most appropriate level of service that is safe and effective.

~~8.~~ 9. "Provider" means an individual, entity, or facility furnishing medical or remedial services or supplies pursuant to a provider agreement with the department.

10. "Psychiatric residential treatment facility" is as defined in subsection 10 of section 75-03-17-01.

~~9.~~ 11. "Recipient" means an individual approved as eligible for medical assistance.

~~10.~~ 12. "Rehabilitative services" means any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.

~~11.~~ 13. "Remedial services" includes those services, including rehabilitative services, which produce the maximum reduction in physical or mental disability and restoration of a recipient to the recipient's best possible functional level.

~~12. "Residential treatment center for children" means a facility or a distinct part of a facility that provides to children and adolescents a total, twenty-four hour, therapeutic environment integrating group living, educational services, and a clinical program based upon a comprehensive, interdisciplinary clinical assessment and an individualized treatment plan that meets the needs of the child and family. The services are available to children in need of and able to respond to active psychotherapeutic intervention and who cannot be~~

~~effectively treated in their own family, in another home, or in a less restrictive setting.~~

~~13. "Secretary" means the secretary of the United States department of health and human services.~~

14. "Section 1931 group" includes individuals whose eligibility is based on the provisions of section 1931 of the Social Security Act [42 U.S.C. 1396u-1].

History: Effective May 1, 2000; amended effective August 29, 2000; November 1, 2001; September 1, 2003; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-01

75-02-02-08. Amount, duration, and scope of medical assistance.

1. Within any limitations which may be established by rule, regulation, or statute and within the limits of legislative appropriations, eligible recipients may obtain the medically necessary medical and remedial care and services which are described in the approved medicaid state plan ~~for medical assistance~~ in effect at the time the service is rendered ~~and which~~ by providers. Services may may include:

   a. (1) Inpatient hospital services ~~(other than services in an institution for mental diseases)~~. "Inpatient hospital services" means those items and services ordinarily furnished by the hospital for the care and treatment of inpatients provided under the direction of a physician or dentist in an institution maintained primarily for treatment and care of patients with disorders other than tuberculosis or mental diseases and which is licensed or formally approved as a hospital by an officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation; and which has in effect a hospital utilization review plan applicable to all patients who receive medical assistance under title XIX of the Act.

      (2) Inpatient prospective payment system hospitals that are reimbursed by a diagnostic-related group will follow medicare guidelines for supplies and services included and excluded as outlined in 42 CFR 409.10.

   b. Outpatient hospital services. "Outpatient hospital services" means those preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to an outpatient by an institution which is licensed or formally approved as a hospital by an

officially designated state standard-setting authority and is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation and emergency hospital services which are necessary to prevent the death or serious impairment of the health of the individual and which, because of the threat to the life or health of the individual, necessitate the use of the most accessible hospital available which is equipped to furnish such services, even though the hospital does not currently meet the conditions for participation under title XVIII of the Social Security Act.

c. Other laboratory and x-ray services. "Other laboratory and x-ray services" means professional and technical laboratory and radiological services ordered by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, and provided to a patient by, or under the direction of, a physician or licensed practitioner, in an office or similar facility other than a hospital outpatient department or a clinic, and provided to a patient by a laboratory that is qualified to participate under title XVIII of the Social Security Act, or is determined currently to meet the requirements for such participation.

d. Nursing facility services ~~(other than services in an institution for mental diseases)~~. "Nursing facility services" does not include services in an institution for mental diseases and means those items and services furnished by a licensed and otherwise eligible nursing facility or swing-bed hospital maintained primarily for the care and treatment which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for individuals who need or needed on a daily basis nursing care, provided directly or requiring the supervision of nursing personnel, or other rehabilitation services which, as a practical matter, may only be provided in a nursing facility on an inpatient basis.

e. Intermediate care facility for individuals with intellectual disabilities services. "Intermediate care" means those items and services which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. "Intermediate care facility for individuals with intellectual disabilities" has the same meaning as provided in chapter 75-04-01.

f. Early and periodic screening and diagnosis of individuals under twenty-one years of age and treatment of conditions found. Early and periodic screening and diagnosis of individuals under the age

of twenty-one who are eligible under the plan to ascertain their physical or mental defects, and provide health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby. Federal financial participation is available for any item of medical or remedial care and services included under this subsection for individuals under the age of twenty-one. Such care and services may be provided under the plan to individuals under the age of twenty-one, even if such care and services are not provided, or are provided in lesser amount, duration, or scope to individuals twenty-one years of age or older.

g. Physician's services~~, whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere~~. "Physician's services" whether furnished in the office, the patient's home, a hospital, nursing facility, or elsewhere means those services provided, within the scope of practice of the physician's profession as defined by state law, by or under the personal supervision of an individual licensed under state law to practice medicine or osteopathy.

h. Medical care and any other type of remedial care other than physician's services recognized under state law~~,~~ and furnished by licensed practitioners within the scope of their practice as defined by state law. ~~This term means any medical or remedial care or services other than physicians' services, provided within the scope of practice as defined by state law, by an individual licensed as a practitioner under state law.~~

i. Home health care services. "Home health care services", is in addition to the services of physicians, dentists, physical therapists, and other services and items available to patients in their homes and described elsewhere in ~~these definitions~~ this section, means any of the following items and services when they are provided, based on certification of need and a written plan of care by a licensed physician, to a patient in the patient's place of residence, ~~but not including as~~ excluding a residence that is a hospital or a skilled nursing facility:

(1) Intermittent or part-time skilled nursing services furnished by a home health agency;

(2) Intermittent or part-time nursing services of a registered nurse, or a licensed practical nurse, or which are provided under the direction of a physician ~~or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law or~~ and under the supervision of a registered nurse, when ~~no~~ a home health agency is not available to provide nursing services;

(3) Medical supplies, equipment, and appliances ordered or prescribed by the physician as required in the care of the patient and suitable for use in the home; and

(4) Services of a home health aide provided to a patient in accordance with the plan of treatment outlined for the patient by the attending physician and in collaboration with the home health agency.

j. Hospice care. "Hospice care" means the care described in 42 U.S.C. 1395x(dd)(1) furnished by a "hospice program", as that term is defined in 42 U.S.C. 1395x(dd)(2), to a terminally ill individual who has voluntarily elected to have hospice care. Hospice care may be provided to an individual while the individual is a resident of a nursing facility, but only the hospice care payment may be made. An individual's voluntary election must be made in accordance with procedures established by the department which are consistent with procedures established under 42 U.S.C. 1395d(d)(2), for such periods of time as the department may establish, and may be revoked at any time.

k. Private duty nursing services. "Private duty nursing services" means nursing services provided, based on certification of need and a written plan of care which is provided under the direction of a physician ~~or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law~~, ~~and~~ by a registered nurse or a licensed practical nurse under the supervision of a registered nurse to a patient in the patient's own home.

l. Dental services. "Dental services" means any diagnostic, preventive, or corrective procedures administered by or under the supervision of a dentist in the practice of the dentist's profession and not excluded from coverage. Dental services include treatment of the teeth and associated structures of the oral cavity, and of disease, injury, or impairment which may affect the oral or general health of the individual.

m. Physical therapy. "Physical therapy" means those services prescribed by a physician <u>or other licensed practitioner of the healing arts within the scope of that person's practice under state law</u> and provided to a patient by or under the supervision of a qualified physical therapist.

n. Occupational therapy. "Occupational therapy" means those services prescribed by a physician <u>or other licensed practitioner of the healing arts within the scope of that person's practice under state law</u> and provided to a patient and given by or under the supervision of a qualified occupational therapist.

o. Services for individuals with speech, hearing, and language disorders. "Services for individuals with speech, hearing, and language disorders" means those diagnostic, screening, preventive, or corrective services provided by or under the supervision of a speech pathologist or audiologist in the scope of practice of the speech pathologist's or audiologist's profession for which a patient is referred by a physician.

p. Prescribed drugs. "Prescribed drugs" means any simple or compounded substance or mixture of substances prescribed as such or in other acceptable dosage forms for the cure, mitigation, or prevention of disease, or for health maintenance, by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's professional practice as defined and limited by federal and state law.

q. Durable medical equipment and supplies. "Durable medical equipment and supplies" means those medically necessary items suitable for use in the home and used to treat disease, to promote healing, to restore bodily functioning to as near normal as possible, or to prevent further deterioration, debilitation, or injury which are provided under the direction of a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law. Durable medical equipment includes prosthetic and orthotic devices, eyeglasses, and hearing aids. For purposes of this subdivision:

(1) "Eyeglasses" means lenses, including frames when necessary, and other aids to vision prescribed by a physician skilled in diseases of the eye, or by an optometrist, whichever the patient may select, to aid or improve vision;

(2) "Hearing aid" means a specialized orthotic device individually <u>prescribed and</u> fitted to correct or ameliorate a hearing disorder; and

(3) "Prosthetic and orthotic devices" means replacement, corrective, or supportive devices prescribed for a patient by a physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law for the purpose of artificially replacing a missing portion of the body, or to prevent or correct physical deformity or malfunction, or to support a weak or deformed portion of the body.

r. Other diagnostic, screening, preventive, and rehabilitative services.

(1) "Diagnostic services", other than those for which provision is made elsewhere in these definitions, includes any medical procedures or supplies recommended for a patient by the patient's physician or other licensed practitioner of the healing arts within the scope of the physician's or practitioner's practice as defined by state law, as necessary to enable the physician or practitioner to identify the existence, nature, or extent of illness, injury, or other health deviation in the patient.

(2) "Preventive services" means those provided by a physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, to prevent illness, disease, disability, and other health deviations or their progression, prolong life, and promote physical and mental health and efficiency.

(3) "Rehabilitative services", in addition to those for which provision is made elsewhere in these definitions, includes any medical remedial items or services prescribed for a patient by the patient's physician or other licensed practitioner of the healing arts, within the scope of the physician's or practitioner's practice as defined by state law, for the purpose of maximum reduction of physical or mental disability and restoration of the patient to the patient's best possible functional level.

(4) "Screening services" consists of the use of standardized tests performed under medical direction in the mass examination of a designated population to detect the existence of one or more particular diseases or health deviations or to identify suspects for more definitive studies.

s. Inpatient psychiatric services for individuals under age twenty-one, as defined in 42 CFR 440.160, provided consistent with the requirements of 42 CFR part 441 and section 75-02-02-10.

t. Services provided to persons age sixty-five and older in an institution for mental diseases, as defined in 42 U.S.C. 1396d(i).

u. Personal care services. "Personal care services" means those services that assist an individual with activities of daily living and instrumental activities of daily living in order to maintain independence and self-reliance to the greatest degree possible.

v. Any other medical care and any other type of remedial care recognized under state law and specified by the secretary <u>of the United States' department of health and human services</u>, including:

(1) Transportation, including expenses for transportation and other related travel expenses, necessary to securing medical examinations or treatment when determined by the department to be medically necessary.

(2) Family planning services, including drugs, supplies, and devices, when such services are under the medical direction of a physician or licensed practitioner of the healing arts within the scope of their practices as defined by state law. There must be freedom from coercion or pressure of mind and conscience and freedom of choice of method, so that individuals may choose in accordance with the dictates of their consciences.

(3) Whole blood, including items and services required in collection, storage, and administration, when it has been recommended by a physician or licensed practitioner and when it is not available to the patient from other sources.

w. An exercise program. "Exercise program" includes exercise regimens to achieve various improvements in physical fitness and health.

x. A weight loss program. "Weight loss program" includes programs designed for reduction in weight but does not include weight loss surgery.

2. The following limitations apply to medical and remedial care and services covered or provided under the medical assistance program:

a. Coverage may not be extended and payment may not be made for ~~diet remedies~~ an exercise program or a weight loss program prescribed for eligible recipients.

b. Coverage may not be extended and payment may not be made for alcoholic beverages prescribed for eligible recipients.

c. Coverage may not be extended and payment may not be made for orthodontia prescribed for eligible recipients, except for orthodontia necessary to correct serious functional problems.

d. Coverage may not be extended and payment may not be made for any service provided to increase fertility or to evaluate or treat fertility.

~~d.~~ e. Coverage and payment for eye examinations and eyeglasses for eligible recipients are limited to, and payment will only be made for, examinations and eyeglass replacements necessitated because of visual impairment. ~~Coverage and payment for eyeglass frames are~~

~~available for a reasonable number of frames, and in a reasonable amount, not to exceed limits set by the department. No coverage exists, and no payment may be made, for eyeglass frames which exceed the limits.~~

f. Coverage may not be extended to and payment may not be made for any physician-administered drugs in an outpatient setting if the drug does not meet the requirements for a covered outpatient drug as outlined in section 1927 of the Social Security Act [42 U.S.C. 1396r-8].

~~e.~~ g. Coverage and payment for home health care services and private duty nursing services are limited to a monthly amount determined by taking the monthly charge, to the medical assistance program, for the most intensive level of nursing care in the most expensive nursing facility in the state and subtracting therefrom the cost, in that month, of all medical and remedial services furnished to the recipient (except physician services and prescribed drugs). For the purposes of determining this limit, remedial services include home and community-based services, service payments to the elderly and disabled, homemaker and home health aide services, and rehabilitative services, regardless of the source of payment for such services.

(1) This limit may be exceeded, in unusual and complex cases, if the provider has submitted and the department has approved a prior treatment authorization request ~~describing each medical and remedial service to be received by the recipient, stating the cost of that service, describing~~.

(2) The prior authorization request must describe the medical necessity ~~for the provision~~ of the home health care services or private duty nursing services, and ~~explaining~~ explain why less costly alternative treatment does not afford necessary medical care~~, and has had the request approved~~.

~~f.~~ h. Coverage may not be extended and payment may not be made for transportation services except as provided in sections 75-02-02-13.1 and 75-02-02-13.2.

~~g.~~ i. Coverage may not be extended and payment may not be made for any abortion except when necessary to save the life of the mother or when the pregnancy is the result of an act of rape or incest.

~~h.~~ j. Coverage for ambulance services must be in response to a medical emergency and may not be extended and payment may not be made for ambulance services that are not medically necessary, as determined by the department~~, and provided in response to a medical emergency~~.

~~i.~~ k. Coverage for an emergency room must be made in response to a medical emergency and may not be extended and payment may not be made for emergency room services that are not medically necessary, as determined by the department under section 75-02-02-12~~, and provided in response to a medical emergency~~.

~~j.~~ l. Coverage may not be extended and payment may not be made for medically necessary chiropractic services exceeding ~~twenty-four~~ twelve treatments for spinal manipulation services and ~~eight~~ two radiologic examinations per year, per recipient, unless the provider requests and receives prior authorization from the department.

~~k.~~ m. Coverage and payment for personal care services:

(1) May not be made unless prior authorization is granted, and the recipient meets the criteria established in subsection 1 of section 75-02-02-09.5; and

(2) May be approved for:

(a) Up to one hundred twenty hours per month, or at a daily rate;

(b) Up to two hundred forty hours per month if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or

(c) ~~May be approved up~~ Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

n. Coverage and payment for pharmacy services are limited to:

(1) The lower of the estimated acquisition costs plus reasonable dispensing fees established by the department;

(2) The provider's usual and customary charges to the general public; or

(3) The federal upper limit plus reasonable dispensing fees established by the department. For the department to meet the requirements of 42 CFR 447.331-447.333, pharmacy providers agree when enrolling as a provider to fully comply with any acquisition cost survey and any cost of dispensing survey completed for the department or centers for medicare and medicaid services. Pharmacy providers agree to provide all requested data to the department, centers for medicare and medicaid services, or their agents, to allow for calculation of estimated acquisition costs for drugs as well as estimated costs of dispensing. This data will include wholesaler invoices and pharmacy operational costs. Costs can include salaries, overhead, and primary wholesaler invoices if a wholesaler is partially or wholly owned by the pharmacy or parent company or has any other relationship to the pharmacy provider.

3. a. Except as provided in subdivision b, remedial services are covered services.

   b. Remedial services provided by residential facilities such as licensed basic care facilities, licensed foster care homes or facilities, and specialized facilities are not covered services, but expenses incurred in securing such services must be deducted from countable income in determining financial eligibility.

4. a. The department may refuse payment for any covered service or procedure for which a prior treatment authorization request is required but not secured.

   b. The department may consider making payment if the provider demonstrates good cause for the failure to secure the required prior treatment authorization request. Provider requests for good cause consideration must be received within twelve months of the ~~time~~ date the services or procedures were furnished.

   c. The department may refuse payment for any covered service or procedure provided to an individual eligible for both medicaid and other insurance if the insurance denies payment because of the failure of the provider or recipient to comply with the requirements of the other insurance.

5. A provider of medical services who provides a covered service except for personal care services, but fails to receive payment due to the ~~operation~~ requirements of subsection 4, and who attempts to collect from the eligible recipient or the eligible recipient's responsible relatives any amounts which would have been paid by the department but for the ~~operation~~ requirements of subsection 4, has by so doing breached the agreement referred to in subsection 4 of section 75-02-02-10.

6. a. Effective January 1, 1994, and for so long thereafter as the department may have in effect a waiver (issued pursuant to 42 U.S.C. 1396n(b)(1)) of requirements imposed pursuant to 42 U.S.C. chapter 7, subchapter XIX, no payment may be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:

(1) Who are required by this subsection to select, or have selected on their behalf, a primary care physician, but who have not selected, or have not had selected on their behalf, a primary care physician; or

(2) By a provider who is not the primary care physician selected by or on behalf of the recipient or who has not received a referral of such a recipient from the primary care physician.

b. A primary care physician must be selected by or on behalf of the members of a medical assistance unit which includes:

(1) Persons who are members of the section 1931 group.

(2) Families who were in the section 1931 group in at least three of the six months immediately preceding the month in which they became ineligible as a result (wholly or partly) of the collection or increased collection of child or spousal support, and continue to be eligible for medicaid for four calendar months following the last month of section 1931 group eligibility.

(3) Families who were in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible solely because of hours of, or income from, employment of the caretaker relative; or which became ineligible because a member of the family lost the time-limited disregards (the percentage disregard of earned income).

(4) Children born to eligible pregnant women who have applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth and for the remaining days of the month in which the sixtieth day falls.

(5) Eligible caretaker relatives and individuals under the age of twenty-one who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy, but not including children in foster care.

(6) Pregnant women whose pregnancies have been medically verified and who, except for income and assets, would be eligible as categorically needy.

(7) Pregnant women whose pregnancies have been medically verified and who qualify on the basis of financial eligibility.

(8) Pregnant women whose pregnancies have been medically verified and who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred thirty-three percent of the poverty level.

(9) Eligible women, who applied for medicaid during pregnancy, for sixty days after the day each pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.

(10) Children under the age of six who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred thirty-three percent of the poverty level.

(11) Children, age six through eighteen, who meet the nonfinancial and asset requirements of the medicaid program and whose family incomes are at or below one hundred percent of the poverty level.

c. Physicians practicing in the following specialties, practices, or locations may be selected as primary care physicians:

(1) Family practice;

(2) Internal medicine;

(3) Obstetrics;

(4) Pediatrics;

(5) Osteopathy;

(6) General practice;

(7) Rural health clinics;

(8) Federally qualified health centers; and

(9) Indian health clinics.

d. A recipient identified in subdivision b need not select, or have selected on the recipient's behalf, a primary care physician if:

(1) Aged, blind, or disabled;

(2) The period for which benefits are sought is prior to the date of application;

(3) Receiving foster care or subsidized adoption benefits; or

(4) Receiving home and community-based services.

e. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care physician:

(1) Certified family nurse practitioner services;

(2) Certified pediatric nurse practitioner services;

(3) Early and periodic screening, diagnosis, and treatment of recipients under twenty-one years of age;

(4) Family planning services;

(5) Certified nurse midwife services;

(6) Pediatric services;

(7) Optometric services;

(8) Chiropractic services;

(9) Clinic services;

(10) Dental services, including orthodontic services only upon referral from early and periodic screening, diagnosis, and treatment;

(11) Intermediate care facility services for individuals with intellectual disabilities;

(12) Emergency services;

(13) Transportation services;

(14) Case management services;

(15) Home and community-based services;

(16) Nursing facility services;

(17) Prescribed drugs except as provided in section 75-02-02-27;

(18) Psychiatric services;

(19) Ophthalmic services;

(20) Obstetrical services;

(21) Psychological services;

(22) Ambulance services;

(23) Immunizations;

(24) Independent laboratory and radiology services; and

(25) Public health unit services.

(26) Personal care services.

f. Except as provided in subdivision d, and if the department exempts the recipient, a primary care physician must be selected for each recipient.

g. Primary care physicians may be changed at any time within ninety days after the recipient is informed of the requirements of this subsection, at redetermination of eligibility, and once every six months with good cause. Good cause for changing primary care physicians less than six months after a previous selection of a primary care physician exists if:

(1) The recipient relocates;

(2) Significant changes in the recipient's health require the selection of a primary care physician with a different specialty;

(3) The primary care physician relocates or is reassigned;

(4) The selected physician refuses to act as a primary care physician or refuses to continue to act as a primary care physician; or

(5) The department, or its agents, determine, in the exercise of sound discretion, that a change of primary care physician is necessary.

~~7. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:~~

~~a. Required a prior treatment authorization request that was not granted;~~

~~b. Imposed a limit that is exceeded;~~

~~c. Imposed a condition that was not met;~~

~~d. Specifically reserved authority to make determinations of medical necessity; or~~

~~e. Upon review, determined that the service or supplies are not medically necessary.~~

History: Amended effective September 1, 1978; September 2, 1980; February 1, 1981; November 1, 1983; May 1, 1986; November 1, 1986; November 1, 1987; January 1, 1991; July 1, 1993; January 1, 1994; January 1, 1996; July 1, 1996; January 1, 1997; May 1, 2000; amendments partially voided by the Administrative Rules Committee effective June 5, 2000; November 8, 2002; September 1, 2003; July 1, 2006; January 1, 2010; July 1, 2012; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04; 42 USC 1396n(b)(1); 42 CFR 431.53; 42 CFR 431.110; 42 CFR 435.1009; 42 CFR Part 440; 42 CFR Part 441, subparts A, B, D

75-02-02-09. Nursing facility level of care.

1. "Nursing facility level of care" means, for purposes of medical assistance, services provided by a facility that meets the standards for nursing facility licensing established by the state department of health, and in addition, meets all requirements for nursing facilities imposed under federal law and regulations governing the medical assistance program.

2. Except as provided in subsection 3 or 4, an individual who applies for care in a nursing facility, or who resides in a nursing facility, may demonstrate that a nursing facility level of care is medically necessary only if any one of the criteria in this subsection is met.

   a. The individual's nursing facility stay is, or is anticipated to be, temporary for receipt of medicare part A benefits. A nursing facility stay may be based on this criterion for no more than fourteen days after termination of medicare part A benefits.

   b. The individual is in a comatose state.

c. The individual requires the use of a ventilator at least six hours per day, seven days a week.

d. The individual has respiratory problems that require regular treatment, observation, or monitoring that may only be provided by or under the direction of a registered nurse or, in the case of a facility which has secured a waiver of the requirements of 42 CFR 483.30(b), a licensed practical nurse, and is incapable of self-care.

e. The individual requires constant help sixty percent or more of the time with at least two of the activities of daily living of toileting, eating, transferring, and locomotion. For purposes of this subdivision, constant help is required if the individual requires a caregiver's continual presence or help without which the activity would not be completed.

f. The individual requires aspiration for maintenance of a clear airway.

g. The individual has dementia, physician-diagnosed or supported with corroborative evidence, for at least six months, and as a direct result of that dementia, the individual's condition has deteriorated to the point when a structured, professionally staffed environment is needed to monitor, evaluate, and accommodate the individual's changing needs.

3. If no criteria of subsection 2 is met, an individual who applies for care in a nursing facility or who resides in a nursing facility may demonstrate that a nursing facility level of care is medically necessary if any two of the criteria in this subsection are met.

a. The individual requires administration of prescribed:

(1) Injectable medication;

(2) Intravenous medication or solutions on a daily basis; or

(3) Routine oral medications, eye drops, or ointments on a daily basis.

b. The individual has one or more unstable medical conditions requiring specific and individual services on a regular and continuing basis that can only be provided by or under the direction of a registered nurse or, in the case of a facility which has secured a waiver of the requirements of 42 CFR 483.30(b), a licensed practical nurse.

c. The individual is determined to have restorative potential and can benefit from restorative nursing or therapy treatments, such as gait

training or bowel and bladder training, which are provided at least five days per week.

d. The individual requires administration of feedings by nasogastric tube, gastrostomy, jejunostomy, or parenteral route.

e. The individual requires care of decubitus ulcers, stasis ulcers, or other widespread skin disorders.

f. The individual requires constant help sixty percent or more of the time with any one of the activities of daily living of toileting, eating, transferring, or locomotion. For purposes of this subdivision, constant help is required if the individual requires a caregiver's continual presence or help without which the activity would not be completed.

4. If no criteria of subsection 2 or 3 is met, an individual who applies to or resides in a nursing facility designated as a facility for nongeriatric individuals with physical disabilities may demonstrate that a nursing facility level of care is medically necessary if the individual is determined to have restorative potential.

5. If no criteria of subsection 2, 3, or 4 is met, an individual who applies for care in a nursing facility may demonstrate that a nursing level of care is medically necessary if:

a. The individual has an acquired brain injury, including anoxia, cerebral vascular accident, brain tumor, infection, or traumatic brain injury; and

b. As a result of the brain injury, the individual requires direct supervision at least eight hours a day<u>, seven days a week</u>.

6. a. Payment, by the department of human services, for care furnished in a nursing facility to individuals who were applicants for or recipients of medical assistance benefits prior to admission to the nursing facility may be made only for periods after a nursing facility level of care determination is made. If a nursing facility admits an individual who has applied for or is receiving medical assistance benefits before a nursing facility level of care determination is made, the nursing facility may not solicit or receive payment, from any source, for services furnished before the level of care determination is made.

b. Payment, by the department of human services, for care furnished in a nursing facility to individuals who become applicants for or recipients of medical assistance benefits after admission to the nursing facility may be made only after a nursing facility level of care determination is made.

c. Payment, by the department of human services, for care furnished in a nursing facility to individuals who are eligible for medicare benefits related to that care, and who are also eligible for medical assistance, may be made only after a nursing facility level of care determination is made.

7. A nursing facility shall ensure that appropriate medical, social, and psychological services are provided to each resident of the facility who is dependent in whole or in part on the medical assistance program under title XIX of the Social Security Act. The appropriateness of such services must be based on the need of each resident to attain or maintain the resident's highest practicable physical, mental, and psychosocial well-being, and must consider, among other factors, age.

History: Amended effective September 1, 1979; July 1, 1993; November 1, 2001; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04; 42 CFR Part 442

75-02-02-09.1. Cost sharing.

1. Copayments provided for in this section may be imposed unless:

   a. The recipient receiving the service:

      (1) Lives in a nursing facility, intermediate care facility for individuals with intellectual disabilities, or the state hospital;

      (2) Receives swing-bed services in a hospital;

      (3) Has not reached the age of twenty-one years; ~~or~~

      (4) Is pregnant~~.~~;

      (5) Is an Indian who receives services from Indian health service providers or through referral by contract health services; or

      (6) Is terminally ill and is receiving hospice care.

   b. The service is:

      (1) Emergency room services that are elective or not urgent; or

      (2) Family planning services.

2. Copayments are:

   a. Seventy-five dollars for each inpatient hospital admission ~~except,~~ including admissions to distinct part psychiatric and rehabilitation

units of hospitals ~~paid as psychiatric, rehabilitative, or~~ and excluding long-term hospitals;

b. ~~Six~~ Three dollars for each nonemergency ~~service provided in a~~ visit to a hospital emergency room;

c. Two dollars for each ~~physician~~ doctor of medicine or osteopathy visit;

d. Three dollars for each office visit to a rural health clinic or federally qualified health center;

e. One dollar for each chiropractic ~~visit~~ manipulation of the spine;

f. Two dollars for each ~~preventive~~ dental ~~office~~ visit that includes an oral examination;

g. Three dollars for each brand name prescription filled;

h. Two dollars for each optometric visit that includes a vision examination;

i. Three dollars for each podiatric office visit;

j. Two dollars for each occupational therapy visit;

k. Two dollars for each physical therapy visit;

l. One dollar for each speech therapy visit;

m. Three dollars for each hearing aid dispensing ~~fee~~ service;

n. Two dollars for each audiology testing visit; ~~and~~

o. Two dollars for each psychological visit~~.~~; and

~~p.~~ Two dollars for each licensed independent clinical social worker visit.

History: Effective January 1, 1997; amended effective November 8, 2002; September 1, 2003; July 1, 2006; July 1, 2012; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-09.3. Limitations on payment for dental services.

1. No payment will be made for single crowns on posterior teeth for individuals twenty-one years of age and older except for stainless steel

crowns. Payment for other crowns may be allowed by the department for the anterior portion of the mouth for adults if the crown is necessary and has been previously approved by the department.

2. No payment will be made for single crowns on posterior teeth for individuals less than twenty-one years of age except for stainless steel crowns. Payment may be made if a dental condition exists that makes stainless steel crowns impracticable and the provider has secured the prior approval of the department.

3. ~~No payment~~ Payment will be made for partial dentures ~~except~~ for upper and lower temporary partial stayplate dentures. Payment may be made for other types of partial dentures designed to replace teeth in the anterior portion of the mouth if the provider secures prior approval from the department. Replacement of dentures is limited to every five years unless a medical condition of a recipient, verified by a dental consultant, rends the present dentures unusable. This limitation does not apply to individuals eligible for the early, periodic screening, diagnosis, and treatment program.

History: Effective September 1, 2003; amended effective October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-09.4. General limitations on amount, duration, and scope.

1. Covered medical or remedial services or supplies are medically necessary when determined so by the medical provider unless the department has:

   a. Denied a prior treatment authorization request to provide the service;

   b. Imposed a limit that has been exceeded;

   c. Imposed a condition that has not been met;

   d. Upon review under North Dakota Century Code chapter 50-24.1, determined that the service or supplies are not medically necessary.

~~1.~~ 2. Limitations on payment for occupational therapy, physical therapy, and speech therapy.

   a. No payment will be made for occupational therapy provided to an individual except for twenty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination to services delivered by independent occupational therapists and in outpatient

hospital settings. This limit does not apply to school-based services for children.

b. No payment will be made for physical therapy provided to an individual except for fifteen visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination to services delivered by independent physical therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.

c. No payment will be made for speech therapy provided to an individual except for thirty visits per individual per calendar year unless the provider requests and receives prior authorization from the department. This limit applies in combination to services delivered by independent speech therapists and in outpatient hospital settings. This limit does not apply to school-based services for children.

~~2.~~ 3. Limitation on payment for eye services.

a. No payment will be made for eyeglasses for individuals twenty-one years of age and older except for one pair of eyeglasses no more often than once every two years. No payment will be made for the repair or replacement of eyeglasses during the two-year period unless the provider has secured the prior approval of the department and the department has found that the repair or replacement is medically necessary.

b. No payment will be made for refractive examinations for individuals twenty-one years of age and older except for one refractive examination no more often than every two years after an initial examination paid by the department unless the provider has secured the prior approval of the department.

~~3.~~ 4. Limitation on chiropractic services.

a. No payment will be made for spinal manipulation treatment services except for twelve spinal manipulation treatment services per individual per calendar year unless the provider requests and receives the prior approval of the department.

b. No payment will be made for radiologic examinations performed by a chiropractor except for two radiologic examinations per individual per year unless the provider requests and receives the prior approval of the department.

~~4.~~ 5. No payment will be made for psychological visits except for forty visits per individual per calendar year unless the provider requests and receives the prior approval of the department.

History: Effective September 1, 2003; amended effective July 1, 2006; July 1, 2009; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-09.5. Limitations on personal care services.

1. No payment for personal care services may be made unless an assessment of the recipient is made by the department or the department's designee and the recipient is determined to be impaired in at least one of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring or in at least three of the instrumental activities of daily living of medication assistance, laundry, housekeeping, and meal preparation.

2. No payment may be made for personal care services unless prior authorization has been granted by the department.

3. Payment for personal care services may only be made to an enrolled qualified service provider who meets the standards described in chapter 75-03-23 or to a basic care assistance provider that qualifies for a rate under chapter 75-02-07.1.

4. No payment may be made for personal care services provided in excess of the services, hours, or timeframe authorized by the department in the recipient's approved service plan.

5. Personal care services may not include skilled health care services performed by persons with professional training.

6. An inpatient or resident of a hospital, a nursing facility, an intermediate care facility for individuals with intellectual disabilities, or an institution for mental ~~disease~~ diseases may not receive personal care services.

7. Personal care services may not include home-delivered meals, services performed primarily as housekeeping tasks, transportation, social activities, or services or tasks not directly related to the needs of the recipient such as doing laundry for family members, cleaning of areas not occupied by the recipient, ~~or~~ shopping for items not used by the recipient, or for tasks when they are completed for the benefit of both the client and the provider.

8. Payment for the tasks of laundry, shopping, housekeeping, meal preparation, money management, and communication cannot be made to a provider who lives with the client and is a relative listed under

the definition of family home care under subsection 4 of North Dakota Century Code section 50-06.2-02 or is a former spouse.

~~8.~~ 9. Meal preparation is limited to the maximum units set by the department. Laundry, shopping, and housekeeping tasks when provided as personal care services must be incidental to the provision of other personal care tasks and cannot exceed thirty percent of the total time authorized for the provision of all personal care tasks. Personal care service tasks of laundry, shopping, and housekeeping are limited to the maximum units set by the department, and the cap cannot be exceeded under other home and community-based services funding sources.

~~9.~~ 10. No payment may be made for personal care services provided to a recipient by the recipient's spouse, parent of a minor child, or legal guardian.

~~10.~~ 11. No payment may be made for care needs of a recipient which are outside the scope of personal care services.

~~11.~~ 12. Authorized personal care services may only be approved for:

a. Up to one hundred twenty hours per month, or at a daily rate;

b. Up to two hundred forty hours per month, or at a daily rate, if the recipient meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; or

c. Up to three hundred hours per month if the recipient is determined to be impaired in at least five of the activities of daily living of bathing, dressing, eating, incontinence, mobility, toileting, and transferring; meets the medical necessity criteria for nursing facility level of care described in section 75-02-02-09 or intermediate care facility for individuals with intellectual disabilities level of care; and none of the three hundred hours approved for personal care services are allocated to the tasks of laundry, shopping, or housekeeping.

~~12.~~ 13. Personal care services may only be provided when the needs of the recipient exceed the abilities of the recipient's spouse or parent of a minor child to provide those services. Personal care services may not be substituted when a spouse or parent of a minor child refuses or chooses not to perform the service for a recipient. Personal care services may be provided during periods when a spouse or parent of a minor child is gainfully employed if the services cannot be delayed until the spouse or parent is able to perform them.

~~13.~~ 14. Personal care services may not be provided for tasks that are otherwise age appropriate or generally needed by an individual within the normal stages of development.

~~14.~~ 15. The authorization for personal care services may be terminated if the services are not used within sixty days, or if services lapse for at least sixty days, after the issuance of the authorization to provide personal care services.

~~15.~~ 16. The department may deny or terminate personal care services when service to the client presents an immediate threat to the health or safety of the client, the provider of services, or others, or when services that are available are not adequate to prevent a threat to the health or safety of the client, the provider of services, or others.

17. Decisions regarding personal care services for an incapacitated client are health care decisions that may be made pursuant to North Dakota Century Code section 23-12-13.

18. The applicant or guardian of the applicant shall provide information sufficient to establish eligibility for benefits, including a social security number, proof of age, identity, residence, blindness, disability, functional limitation, financial eligibility, and such other information as may be required by this chapter for each month for which benefits are sought.

19. Payment for personal care services may not be made unless the client has been determined eligible to receive medicaid benefits.

History: Effective July 1, 2006; amended effective January 1, 2010; July 1, 2012; October 1, 2012.
General Authority: NDCC 50-24.1-18
Law Implemented: NDCC 50-24.1-18; 42 CFR Part 440.167

75-02-02-10. Limitations on inpatient psychiatric services.

1. Inpatient psychiatric services for individuals under age twenty-one must be provided:

   a. Under the direction of a physician;

   b. By a psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the joint commission on accreditation of health care organizations, or by a psychiatric facility that is not a hospital and which is accredited by the joint commission on accreditation of health care organizations, the commission on accreditation of rehabilitation facilities, the council on accreditation of services for families and children, or by any other accrediting organization with comparable standards; and

c. Before the individual reaches age twenty-one, or, if the individual was receiving inpatient psychiatric services immediately before reaching age twenty-one, before the earlier of:

(1) The date the individual no longer requires inpatient psychiatric services; or

(2) The date the individual reaches age twenty-two.

2. A psychiatric facility or program providing inpatient psychiatric services to individuals under age twenty-one ~~must~~ shall:

a. Except as provided in subdivision c, obtain a certification of need from an independent review team qualified under subsection 3 prior to admitting an individual who is eligible for medical assistance;

b. Obtain a certification of need from ~~a team responsible for developing a plan of care under 42 CFR 441.156~~ an independent review team qualified under subsection 3 for an individual who applies for medical assistance while in the facility or program covering any period for which claims are made; or

c. Obtain a certification of need from ~~a team responsible for developing a plan of care under 42 CFR 441.156~~ an independent review team qualified under subsection 3 for an emergency admission of an individual, within fourteen days after the admission, covering any period prior to the certification for which claims are made.

3. a. An independent review team must:

(1) Be composed of individuals who have no business or personal relationship with the inpatient psychiatric facility or program requesting a certification of need;

(2) Include a physician;

(3) Have competence in diagnosis and treatment of mental illness; and

(4) Have adequate knowledge of the situation of the individual for whom the certification of need is requested.

b. Before issuing a certification of need, an independent review team must use professional judgment and standards approved by the department and consistent with the requirements of 42 CFR part 441, subpart D, to demonstrate:

(1) Ambulatory care resources available in the community do not meet the treatment needs of the individual;

(2) Proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

(3) The requested services can reasonably be expected to improve the individual's condition or prevent further regression so services may no longer be needed.

4. No payment will be made for inpatient psychiatric services provided to an individual, other than those described in subsection 1, in a distinct part unit of a hospital except for the first twenty-one days of each admission. Payment may not be made for inpatient psychiatric services exceeding forty-five days per calendar year per individual.

History: Amended effective January 1, 1997; November 1, 2001; November 8, 2002; July 1, 2006; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04; 42 CFR Part 441, subpart D

75-02-02-10.1. Limitations on ~~rehabilitative~~ services in psychiatric residential treatment ~~centers~~ facilities.

1. A psychiatric residential treatment ~~center~~ facility providing rehabilitative services to individuals under the age of twenty-one must obtain a certification of need from an independent review team:

   a. Prior to admitting an individual who is eligible for medical assistance;

   b. For an individual who applies for medical assistance while in the facility; or

   c. For an individual who applies for medical assistance after receiving services.

2. Before issuing a certification of need, an independent review team must demonstrate that:

   a. Ambulatory care resources available in the community do not meet the treatment needs of the individual;

   b. Proper treatment of the individual's psychiatric condition requires services on an inpatient basis under the direction of a physician; and

c. The requested services can reasonably be expected to improve the individual's condition or prevent further regression so services may no longer be needed.

3. An independent review team must:

   a. Be composed of individuals who have no business or personal relationship with the psychiatric residential treatment ~~center~~ facility requesting a certification of need;

   b. Include a physician;

   c. Have competence in diagnosis and treatment of mental illness; and

   d. Have adequate knowledge of the situation of the individual for whom the certification is requested.

4. Payment ~~will~~ may not be made for ~~rehabilitation~~ services provided to a recipient under the age of twenty-one in a psychiatric residential treatment ~~center~~ psychiatric facility without a certification of need.

5. Payment may not be made for any other medical services not provided by a psychiatric residential treatment facility if the facility is an institution for mental diseases.

History: Effective November 1, 2001; amended effective October 1, 2012.
General Authority: NDCC 50-24.1-04; 42 CFR 456.1; 42 CFR 456.3
Law Implemented: NDCC 50-24.1-04; 42 CFR Part 441, subpart D

75-02-02-10.2. Limitations on ambulatory behavioral health care.

1. For purposes of this section:

   a. "Ambulatory behavioral health care" means ambulatory services provided to an individual with a significant impairment resulting from a psychiatric, emotional, behavioral, or addictive disorder which are provided by a multidisciplinary team of health care professionals and are designed to stabilize the health of the individual with the intent to avert inpatient hospitalization in place of inpatient hospitilization or to reduce the length of a hospital stay.

   b. "Level A ambulatory behavioral health care" means an intense level of ambulatory behavioral health care which provides treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for at least four hours and no more than eleven hours per day for at least three days per week.

c. "Level B ambulatory behavioral health care" means an intermediate level of ambulatory behavioral health care that provides treatment for an individual by at least three licensed health care professionals under the supervision of a licensed physician for three hours per day for at least two days per week.

d. "Level C ambulatory behavioral health care" means a low level of ambulatory behavioral health care that provides chemical dependency treatment for an individual by at least one licensed health care professional under the supervision of a licensed physician for less than three hours per day and no more than three days per week.

2. No payment for ambulatory behavioral health care will be made unless the provider requests authorization from the department within three business days of providing such services and the department approves such request. A provider must submit a written request for authorization to the department on forms prescribed by the department.

3. Limitations.

a. Payment may not be made for level A ambulatory behavioral health care services exceeding thirty days per calendar year per individual.

b. Payment may not be made for level B ambulatory behavioral health care services exceeding fifteen days per calendar year per individual.

c. Payment may not be made for level C ambulatory behavioral health care services exceeding twenty days per calendar year per individual.

History: Effective November 8, 2002; amended effective November 19, 2003; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04; 42 CFR Part ~~441~~ 431.54

75-02-02-11. Coordinated services.

1. For purposes of this section:

a. "Coordinated services" means the process used to limit a recipient's medical care and treatment to a single physician or other provider ~~in order~~ to prevent the continued misutilization of services.

b. "Coordinated services provider" means a physician, nurse practitioner, or Indian health service provider selected by the

coordinated services recipient to provide care and treatment to the recipient. The selected coordinated services provider is subject to approval by the department.

c. "Misutilization" means the incorrect, improper, or excessive utilization of medical services which may increase the possibility of adverse effects to a recipient's health or may result in a decrease in the overall quality of care.

2. Coordinated services may be required by the department of a recipient who has misutilized services, including:

a. Securing excessive services from more than one provider when there is little or no evidence of a medical need for those services;

b. Drug acquisition in excess of medical need resulting from securing prescriptions or drugs from more than one provider; or

c. Excessive utilization of emergency services when no medical emergency is present.

3. The determination to require coordinated services of a recipient is made by the department upon recommendation of medical professionals who have reviewed and identified the services the recipient appears to be misutilizing.

4. The following factors must be considered in determining if coordinated services is to be required:

a. The seriousness of the misutilization;

b. The historical utilization of the recipient; and

c. The availability of a coordinated services physician or provider.

5. If a coordinated services recipient does not select a coordinated services provider within thirty days after qualifying for the program, the department will assign a coordinated services provider on the recipient's behalf. If the department assignment for the coordinated services program is necessary, the most utilized providers that the recipient has visited during the preceding six months will be designated as the recipient's coordinated services provider. A coordinated services recipient may have a coordinated services provider in more than one medical specialty.

~~5.~~ 6. Upon a determination to require coordinated services:

a. The department shall provide the recipient with written notice of:

(1) The decision to require coordinated services;

(2) The recipient's right to choose a coordinated services provider, subject to approval by the department and acceptance by the provider;

(3) The recipient's responsibility to pay for medical care or services rendered by any provider other than the coordinated services provider; and

(4) The recipient's right to appeal the requirement of enrollment into the coordinated services program.

b. The appropriate county agency shall:

(1) Obtain the recipient's selection of a coordinated services provider; and

(2) Document that selection in the case record.

~~6.~~ 7. Coordinated services may be required of an individual recipient and may not be imposed on an entire medical assistance ~~unit~~ case. If more than one recipient within a ~~unit~~ case is misutilizing medical care, each individual recipient must be treated separately.

~~7.~~ 8. Coordinated services may be required without regard to breaks in eligibility until the department determines coordinated services is discontinued.

~~8.~~ 9. No medical assistance payment may be made for misutilized medical care or services furnished to the coordinated services recipient by any provider other than the recipient's coordinated services physician or provider, except for:

a. Medical care rendered in a medical emergency; or

b. Medical care rendered by a provider upon referral by the coordinated services physician or provider and approved by the department.

~~9.~~ 10. A recipient may appeal the decision to require coordinated services in the manner provided by chapter 75-01-03.

History: Effective May 1, 1981; amended effective May 1, 2000; July 1, 2006; October 1, 2012.
General Authority: NDCC 50-24.1-02
Law Implemented: NDCC 50-24.1-01; 42 CFR Part 455

75-02-02-12. Limitations on emergency room services.

1. For purposes of this section, "screening" means the initial evaluation of an individual, intended to determine suitability for a particular medical treatment modality.

~~1.~~ 2. Except in life-threatening situations, the nonphysician provider of emergency services shall assure:

a. The collection of pertinent data from the patient;

b. Screening or examination of the patient as necessary to determine the patient's medical condition;

c. Rendering of indicated care, under the direction of a physician, if a medical emergency exists;

d. ~~If it is determined that the patient is a recipient, making an~~ An attempt is made to contact the recipient's personal ~~physician, or one substituting for that physician,~~ primary care provider to approve services before they are given~~, unless a medical emergency exists~~;

e. Referral to the recipient's ~~physician's~~ primary care provider's office in cases when emergency room services are not indicated; and

f. That professional staff persons use their individual judgment in determining the need for emergency services.

~~2.~~ 3. Physician providers shall:

a. Determine when a medical emergency exists; and

b. Assure that a recipient is referred to the appropriate health delivery setting when emergency room services are not judged to be appropriate.

~~3.~~ 4. Payment for emergency room services.

a. Claims for payment, and documentation in support of those claims, must be submitted on forms prescribed by the department. The claim must contain sufficient documentation to indicate that a medical emergency required emergency room diagnostic services and treatment.

b. Except as provided in subsection ~~4~~ 5, providers must be paid for any medically necessary services authorized by a physician or nurse practitioner, which fact is properly noted on the request for payment.

c. Except as provided in subsection ~~4~~ 5, providers must be paid for screening or examination services rendered.

d. Providers must be paid for services rendered to patients who reside outside of the provider's regular service area and who do not normally utilize the provider's services.

~~4.~~ 5. If the emergency room service claim does not demonstrate the existence of a medical emergency, payment must be denied (except for screening services) unless the services are shown to be medically necessary by ~~special report~~ a redetermination. The provider, upon receipt of notice of denial, may, in writing, make a ~~special report~~ redetermination request to the department. A ~~special report~~ redetermination must include a statement refuting the stated basis for the payment denial and affirmatively demonstrating a medical emergency.

History: Effective February 1, 1982; amended effective May 1, 2000; October 1, 2012.
General Authority: NDCC 50-24.1-02
Law Implemented: NDCC 50-24.1-01; 42 CFR Part 455

75-02-02-13. Limitations on out-of-state care.

1. For purposes of this section:

a. "Out-of-state care" means care or services furnished by any individual, entity, or facility, pursuant to a provider agreement with the department, at a site located more than fifty statute miles [80.45 kilometers] from the nearest North Dakota border.

b. "Out-of-state provider" means a provider of care or services that is located more than fifty statute miles [80.45 kilometers] outside of North Dakota. An out-of-state provider may be an individual or a facility but may not be located outside of the United States.

~~b.~~ c. "Primary ~~physician~~ care provider" means the ~~individual physician~~ enrolled medical provider who has assumed responsibility for the advice and care of the recipient.

~~c.~~ d. "Specialist" means a physician board certified in the required medical specialty who regularly practices within North Dakota or at a site within fifty statute miles [80.45 kilometers] from the nearest North Dakota border.

2. Except as provided in subsection 3, no payment for out-of-state care, including related travel expenses, will be made unless:

a. The medical assistance recipient was first seen by that recipient's primary ~~physician~~ care provider;

b. The primary ~~physician~~ care provider determines that it is advisable to refer the recipient for care or services which the primary ~~physician~~ care provider is unable to render;

c. A request for active treatment is first made to ~~a~~ an in-state, board-certified physician specialist, if available;

d. The specialist concludes that the patient should be referred to an appropriate out-of-state provider because necessary care or services are unavailable in the state;

e. The primary care provider physician ~~or~~ specialist submits, to the department, a written request that includes medical and other pertinent information, including the report of the specialist that documents the specialist's conclusion that the out-of-state referral is medically necessary;

f. The department determines that the medically necessary care and services are unavailable in the state and approves the referral on that basis; and

g. The claim for payment is otherwise allowable and verifies that the department approved the referral for out-of-state care.

3. a. A referral for emergency care, including related travel expenses, to an out-of-state provider can be made by the in-state primary ~~physician~~ care provider. A determination that the emergency requires out-of-state care may be made at the primary ~~physician's~~ care provider's discretion, but is subject to review by the department. Claims for payment for such emergency services must identify the referring ~~physician~~ primary care provider and document the emergency.

b. Claims for payment for care for a medical emergency or surgical emergency, as those terms are defined in section 75-02-02-12, which occurs when the affected medical assistance recipient is traveling outside of North Dakota, will be paid unless payment is denied pursuant to limitations contained in section 75-02-02-12.

c. Claims for payment for any covered service rendered to an eligible medical assistance recipient who is a resident of North Dakota for medical assistance purposes, but whose current place of abode is outside of North Dakota, will not be governed by this section.

d. Claims for payment for any covered service rendered to an eligible medical assistance recipient during a verified retroactive eligibility period will not be governed by this section.

e. If a recipient is referred for out-of-state care without first securing approval under subsection 2, and the care is not otherwise allowable under this subsection, the department may approve payment upon receipt of a written request, from the primary ~~physician~~ care provider or specialist, that:

(1) Demonstrates good cause for not first securing approval under subsection 2;

(2) Clearly establishes that the care and services were unavailable in the state; and

(3) Documents that the care and services were medically necessary.

4. An out-of-state provider who does not maintain a physical, in-state location or a location within fifty statute miles [80.45 kilometers] of North Dakota will not be enrolled as a medicaid provider unless the department determines the provider's enrollment is necessary to ensure access to covered services.

History: Effective November 1, 1983; amended effective October 1, 1995; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-02

75-02-02-13.1. Travel expenses for medical purposes - Limitations.

1. For purposes of this section:

a. "Family member" means spouse, sibling, parent, stepparent, child, stepchild, grandparent, stepgrandparent, grandchild, stepgrandchild, aunt, uncle, niece, or nephew, whether by half or whole blood, and whether by birth, marriage, or adoption; and

b. "Travel expenses" means fares, mileage, meals, lodging, and driver and attendant care.

2. General requirements.

a. A transportation service provider shall be enrolled as a provider in the medical assistance program and may be an individual, a taxi, a bus, ~~or~~ a food service provider, a lodging provider, an airline service provider, a travel agency, or ~~other~~ another commercial form of transportation.

b. The county agency may determine the most efficient, economical, and appropriate means of travel to meet the medical needs of the recipient. ~~The~~ Upon approval, the county agency may ~~authorize~~ approve travel and issue the necessary billing forms.

c. The cost of travel provided by a parent, spouse, or any other member of the recipient's medical assistance unit may be allowed as an expense of necessary medical or remedial care for recipient liability purposes. No parent, spouse, friend, household member, or family member of the recipient may be paid as an enrolled provider for transportation for that recipient. An individual who is court-appointed for foster care, kinship, or guardianship may enroll as a transportation provider and is eligible for reimbursement to transport a child in the individual's court-appointed custody to and from medical appointments.

d. Travel services may be provided by the county agency as an administrative activity.

e. Emergency transport by ambulance is a covered service when provided in response to a medical emergency.

f. Nonemergency ~~transport~~ transportation by ambulance is a covered service only when medically necessary and ordered by the attending ~~physician~~ licensed provider.

g. A recipient may choose to obtain medical services outside the recipient's community. If similar medical services are available within the community and~~, without a referral from a primary physician~~ the recipient chooses to seek medical services elsewhere, travel expenses are not covered services and are the responsibility of the recipient.

h. If a primary care provider refers a recipient to a facility or provider that is not located at the closest medical center, travel expenses are not covered services and are the responsibility of the recipient, unless special circumstances apply and prior authorization is secured.

3. Out-of-state travel expenses. Travel expenses for nonemergency out-of-state medical services, including followup visits, may be ~~compensated only~~ authorized if the out-of-state medical services are first approved by the department under section 75-02-02-13 or if prior approval is not required under that section.

4. Limitations.

a. Private or noncommercial vehicle mileage compensation is limited to an amount set by the department ~~no less than twenty cents~~

~~per mile~~ based on the department's fee schedule. This limit applies even if more than one recipient is transported at the same time. Mileage is determined by map miles from the residence or community of the recipient to the medical facility. When necessary to ensure volunteer drivers continue to provide transportation services to a recipient, the county agency may ~~authorize~~ request authorization from the department to make payment for additional mileage. ~~Private vehicle mileage~~ Transportation services may be billed to medical assistance only upon completion of the service. ~~Private vehicle mileage~~ Transportation services may be allowed if the recipient or a household member does not have a vehicle that is in operable condition or if the health of the recipient or household member does not permit safe operation of the vehicle. ~~Private vehicle mileage will not be allowed if~~ If free or low-cost transportation services are available, including transportation that could be provided by a friend, family member, or household member, the department will not pay transportation mileage.

b. Meals compensation is allowed only when medical services or travel arrangements require a recipient to stay overnight. Compensation is limited to an amount set by the department ~~no less than three dollars and fifty cents for breakfast, five dollars for lunch, and eight dollars and fifty cents for dinner~~ based on the department's fee schedule.

c. Lodging expense is allowed only when medical services or travel arrangements require a recipient to stay overnight. Lodging compensation is limited to an amount set by the department, ~~provided the department may set no limit lower than thirty-five dollars per night, plus taxes, for in-state travel and fifty dollars per night, plus taxes, for out-of-state travel. Lodging receipts must be provided when lodging is not billed directly by an enrolled lodging provider. Enrolled lodging~~ based on the appropriate fee schedule. Lodging providers ~~shall bill~~ must be enrolled in medicaid ~~directly~~ and shall submit the proper forms for payment.

d. ~~Travel expenses may be authorized for a driver. No travel expenses may be authorized for an attendant unless the referring physician determines an attendant is necessary for the physical or medical needs of the recipient.~~ Travel expenses may not be authorized for both a driver and an attendant unless the referring ~~physician~~ licensed practitioner determines that one individual cannot function both as driver and attendant. ~~No travel~~ Travel expenses may not be allowed for a noncommercial driver or an attendant while the recipient is a patient in a medical facility unless it is more economical for the driver or attendant to remain in the service area, as determined by the department.

e. Travel expenses may be authorized for one parent to travel with a child who is under eighteen years of age. No additional travel expenses may be authorized for another driver, attendant, or parent unless the referring ~~physician~~ licensed practitioner determines that person's presence is necessary for the physical or medical needs of the child.

f. Compensation for attendant services, provided by an attendant who is not a family member, may be allowed at a rate determined by the department.

History: Effective July 1, 1996; amended effective May 1, 2000; September 1, 2003; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-13.2. Travel expenses for medical purposes - Institutionalized individuals - Limitations.

1. For purposes of this section:

   a. "Long-term care facility" means a nursing facility, intermediate care facility for individuals with intellectual disabilities, or swing-bed facility; and

   b. "Medical center city" means Bismarck, Devils Lake, Dickinson, Fargo, Grand Forks, Jamestown, Minot, and Williston, and includes any city that shares a common boundary with any of those cities.

2. A long-term care facility may not charge a resident for the cost of travel ~~expenses for services~~ provided by the facility. Except as provided in subsection ~~3~~ 4, a long-term care facility shall provide transportation to and from any provider of necessary medical services located within, or at no greater distance than the distance to, the nearest medical center city. Distance must be calculated by road miles.

3. If the resident has to travel farther than the nearest city with a medical center, the costs of travel may be reimbursed by medicaid according to the appropriate fee schedule. Distance must be calculated by map miles.

~~3.~~ 4. A long-term care facility ~~need not provide either nonemergency transport~~ is not required to pay for transportation by ambulance ~~when medically necessary and ordered by the attending physician or~~ for emergency ~~transport by ambulance~~ or nonemergency situations for residents.

~~4.~~ 5. A service provider that is paid a rate, determined by the department on a cost basis that includes transportation service expenses, however denominated, may not be compensated as a transportation service provider for transportation services provided to an individual residing in the provider's facility. The following service providers may not be so compensated:

~~a. Accredited residential treatment centers;~~

~~b.~~ a. Basic care facilities;

~~c.~~ b. Congregate care facilities serving individuals with developmental disabilities;

~~d.~~ c. Group homes serving children in foster care;

~~e.~~ d. Intermediate care facilities for individuals with intellectual disabilities;

~~f.~~ e. Minimally supervised living arrangement facilities serving individuals with developmental disabilities;

~~g.~~ f. Nursing facilities;

~~g.~~ Psychiatric residential treatment facilities;

h. Residential child care facilities;

~~i. Residential treatment centers for children;~~

~~j.~~ i. Swing-bed facilities; and

~~k.~~ j. Transitional community living facilities serving individuals with developmental disabilities.

~~5.~~ 6. If, under the circumstances, a long-term care facility is not required to transport a resident, and the facility does not actually transport the resident, the availability of transportation services and payment of travel expenses is governed by section 75-02-02-13.1.

History: Effective July 1, 1996; amended effective July 1, 2012; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-04

75-02-02-14. County administration.

1. Except as provided in subsection 2, the county where the medical assistance unit is physically present is responsible for the administration of the program with respect to that unit.

2. When a ~~family~~ unit receiving assistance moves from one county to another, the outgoing county continues to be responsible for the administration of the program with respect to that unit until the last day of the month after the month in which the unit assumes physical residence in an incoming county.

History: Effective November 1, 1983; amended effective July 1, 1984; May 1, 1986; May 1, 2000; October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-01.2-03

75-02-02-27. Scope of drug benefits - Prior authorization.

1. Prior authorization means a process requiring the prescriber or the dispenser to verify with the department or the department's contractor that proposed medical use of a particular drug for a medical assistance program recipient meets predetermined criteria for coverage by the medical assistance program.

2. A prescriber or a dispenser must secure prior authorization from the department or its designee as a condition of payment for those drugs subject to prior authorization.

3. A prescriber or a dispenser must provide to the department or its designee in the format required by the department the data necessary for the department or its designee to make a decision regarding prior authorization. The department shall deny a claim for coverage of a drug requiring prior authorization if the prescription was dispensed prior to authorization or if the required information regarding the prior authorization is not provided by the prescriber or the dispenser.

4. A prescriber or dispenser must submit a request for prior authorization to the department or its designee by telephone, facsimile, electronic mail, or in any other format designated by the department. The department or its designee must respond to a prior authorization request within twenty-four hours of receipt of a complete request that contains all of the data necessary for the department to make a determination.

5. Emergency supply.

   a. If a recipient needs a drug before a prescriber or dispenser can secure prior authorization from the department, the department shall provide coverage of the lesser of a five-day supply of a drug or the amount prescribed if it is not feasible to dispense a five-day supply because the drug is packaged in such a way that it is not intended to be further divided.

b. The department will not provide further coverage of the drug beyond the five-day supply unless the prescriber or dispenser first secures prior authorization from the department.

6. The department must authorize the provision of a drug subject to prior authorization if:

a. Other drugs not requiring prior authorization have not been effective or with reasonable certainty are not expected to be effective in treating the recipient's condition;

b. Other drugs not requiring prior authorization cause or are reasonably expected to cause adverse or harmful reactions to the health of the recipient; or

c. The drug is prescribed for a medically accepted use supported by a compendium or by approved product labeling unless there is a therapeutically equivalent drug that is available without prior authorization.

7. If a recipient is receiving coverage of a drug that is later subject to prior authorization requirements, the department shall continue to provide coverage of that drug until the prescriber must reevaluate the recipient. The department ~~shall develop~~ will provide a form by which a prescriber may inform the department of a drug that a recipient must continue to receive beyond the prescription reevaluation period regardless of whether such drug requires prior authorization. The form shall contain the following information:

a. The requested drug and its indication;

b. An explanation as to why the drug is medically necessary; and

c. The signature of the prescriber confirming that the prescriber has considered generic or other alternatives and has determined that continuing current therapy is in the best interest for successful medical management of the recipient.

8. Except for quantity limits that may be no less than the pharmaceutical manufacturer's package insert or AB-rated generic equivalent drug for which the cost to the state postrebate is less than the brand name drugs, in the aggregate, the department may not ~~require~~ prior ~~authorization for, or otherwise restrict, single-source or brand name antipsychotic, antidepressant, or other medications used to treat mental illnesses such as schizophrenia, depression, or bipolar disorder, and drugs prescribed for the treatment of~~ authorize the following medication classes:

a. ~~Acquired immune deficiency syndrome or human immunodeficiency virus~~ Antipsychotics; ~~or~~

b. ~~Cancer.~~ Antidepressants;

c. Anticonvulsants;

d. Antiretrovirals for the treatment of human immunodeficiency virus;

e. Antineoplastic agents for the treatment of cancer; and

f. Stimulant medication used for the treatment of attention deficit disorder and attention deficit hyperactivity disorder.

History: Effective September 1, 2003; amended effective July 26, 2004; July 1, 2006; October 1, 2012.
General Authority: NDCC 50-24.6-10
Law Implemented: NDCC 50-24.6; 42 USC 1396r-8

75-02-02-28. Drug use review board~~, grievances,~~ and appeals.

1. The department shall implement a prospective and retrospective drug use review program for outpatient prescription drugs and determine which drugs shall be subject to prior authorization before payment will be approved. The department shall consider the advice and recommendations of the drug use review board before requiring prior authorization of any drug.

2. The drug use review board shall:

   a. Cooperate with the department to implement a drug use review program;

   b. Receive and consider information regarding the drug use review process which is provided by the department and interested parties, including prescribers who treat significant numbers of recipients;

   c. Review and make recommendations to the department regarding drugs to be included on prior authorization status;

   d. Review no less than once each year the status of the drugs that have been deemed to require prior authorization and make recommendations to the department regarding any suggested changes;

   e. Review and approve the prior authorization program process used by the department, including the process to accommodate the provision of a drug benefit in an emergency situation;

f. Advise and make recommendations to the department regarding any rule proposed for adoption by the department to implement the provisions of state and federal law related to drug use review; and

g. Propose remedial strategies to improve the quality of care and to promote effective use of medical assistance program funds or recipient expenditures.

3. The drug use review board may establish a panel of physicians and pharmacists to provide guidance and recommendations to the board in considering specific drugs or therapeutic classes of drugs to be included in the prior authorization program.

4. The drug use review board shall make a recommendation to the department regarding prior authorization of a drug based on:

   a. Consideration of medically and clinically significant adverse side effects, drug interactions and contraindications, assessment of the likelihood of significant abuse of the drug, and any other medically and clinically acceptable analysis or criteria requested by the drug use review board; and

   b. An assessment of the cost-effectiveness of the drug compared to other drugs used for the same therapeutic indication and whether the drug offers a clinically meaningful advantage in terms of safety, effectiveness, or clinical outcome over other available drugs used for the same therapeutic indication.

5. Drug use review board meeting procedures.

   a. Any interested party may address the drug use review board at its regular meetings if the presentation is directly related to an agenda item.

   b. The drug use review board may establish time limits for presentations.

   c. The department shall post on its web site the proposed date, time, location, and agenda of any meeting of the drug use review board at least thirty days before the meeting.

6. Within thirty days of the date the drug use review board's recommendation is received by the department, the department shall review the recommendations and make the final determination as to whether a drug requires prior authorization and, if so, when the requirement for prior authorization will begin. If the department's final determination is different from the recommendation of the drug use review board, the department shall present, in writing, to the drug use review board at its next meeting the basis for the final determination.

7. The department shall post on its web site the list of drugs subject to prior authorization and the date on which each drug became subject to prior authorization.

~~8. Grievances.~~

~~a. An interested party may file a grievance with the department regarding a decision of the department to place a drug on prior authorization. In order to be considered by the department, the grievance must:~~

~~(1) Be in writing;~~

~~(2) State the specific reasons the interested party believes the decision to be erroneous or not, based on the facts available to the department at the time of the decision;~~

~~(3) Provide any supporting documentation; and~~

~~(4) Be received by the department within forty-five days of the department's final determination to include the drug on prior authorization.~~

~~b. The department shall consider all grievances that were filed in a timely manner. Within thirty days after the time for filing grievances has expired, the department shall determine whether to change its decision regarding placing a drug on prior authorization. The requirement for prior authorization shall not be suspended during the department's review of timely filed grievances.~~

~~9.~~ 8. A recipient may appeal the department's denial, suspension, reduction, or termination of a covered drug based upon application of this section as authorized under North Dakota Century Code chapter 28-32.

History: Effective September 1, 2003; amended effective October 1, 2012.
General Authority: NDCC 50-24.6-10
Law Implemented: NDCC 50-24.6; 42 USC 1396r-8

75-02-02-29. Primary care provider.

1. Payment may not be made, except as provided in this subsection, for otherwise covered services provided to otherwise eligible recipients:

a. Who are required by this subsection to select, but who have not selected, or have not had selected on their behalf, a primary care provider; or

b. By a provider who is not the primary care provider selected by or on behalf of the recipient or to whom the recipient has not been referred from the primary care provider.

2. A primary care provider must be selected by or on behalf of the members of a medical assistance unit which includes:

a. A person who is a member of the section 1931 group.

b. A family who was in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible as a result, in whole or in part, of the collection or increased collection of child or spousal support, and who continues to be eligible for medicaid for four calendar months following the last month of section 1931 group eligibility.

c. A family who was in the section 1931 group in at least three of the six months immediately preceding the month in which the family became ineligible solely because of hours of, or income from, employment of the caretaker relative; or who became ineligible because a member of the family lost the time-limited disregards which is the percentage disregard of earned income.

d. A child born to an eligible pregnant woman who has applied for and been found eligible for medicaid on or before the day of the child's birth, for sixty days after the day of the child's birth, and for the remaining days of the month in which the sixtieth day falls.

e. An eligible caretaker relative and an individual under the age of twenty-one but not including children in foster care, who qualify for and require medical services on the basis of insufficient income and assets, but who do not qualify as categorically needy.

f. A pregnant woman, whose pregnancy has been medically verified and who:

(1) Would be eligible as categorically needy except for income and assets;

(2) Qualify on the basis of financial eligibility; or

(3) Meet the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.

g. An eligible woman, who applied for medicaid during pregnancy, for sixty days after the day the pregnancy ends, and for the remaining days of the month in which the sixtieth day falls.

h. A child under the age of six who meets the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred thirty-three percent of the poverty level.

i. A child, age six through eighteen, who meets the nonfinancial and asset requirements of the medicaid program and whose family income is at or below one hundred percent of the poverty level.

3. A physician or nurse practitioner practicing in the following specialties, practices, or settings may be selected as a primary care provider:

a. Family practice;

b. Internal medicine;

c. Obstetrics;

d. Pediatrics;

e. Osteopathy;

f. General practice;

g. A rural health clinic;

h. A federally qualified health center; or

i. An Indian health service clinic.

4. A recipient identified in subsection 2 need not select, or have selected on the recipient's behalf, a primary care provider if:

a. The recipient is aged, blind, or disabled;

b. The period for which benefits are sought is prior to the date of application;

c. The recipient is receiving foster care or subsidized adoption benefits; or

d. The recipient is receiving home and community-based services.

5. Payment may be made for the following medically necessary covered services whether or not provided by, or upon referral from, a primary care provider:

a. Early and periodic screening, diagnosis, and treatment of recipients under age twenty-one;

b. Family planning services;

c. Certified nurse midwife services;

d. Optometric services;

e. Chiropractic services;

f. Dental services;

g. Orthodontic services provided as the result of a referral through the early and periodic screening, diagnosis, and treatment program;

h. Services provided by an intermediate care facility for the intellectually disabled;

i. Emergency services;

j. Transportation services;

k. Targeted case management services;

l. Home and community-based services;

m. Nursing facility services;

n. Prescribed drugs except as otherwise specified in section 75-02-02-27;

o. Psychiatric services;

p. Ophthalmic services;

q. Obstetrical services;

r. Psychological services;

s. Ambulance services;

t. Immunizations;

u. Independent laboratory and radiology services;

v. Public health unit services; and

w. Personal care services.

6. Except as provided in subsection 4, or unless the department exempts the recipient, a primary care provider must be selected for each recipient.

7. A primary care provider may be changed during the ninety days after the recipient's initial enrollment with the primary care provider or the date the state sends the recipient notice of the enrollment, at redetermination of eligibility, once every six months during the open enrollment period, or with good cause. Good cause for changing a primary care provider less than six months after the previous selection of a primary care provider exists if:

   a. The recipient relocates;

   b. Significant changes in the recipient's health require the selection of a primary care provider with a different speciality;

   c. The primary care provider relocates or is reassigned;

   d. The selected provider refuses to act as a primary care provider or refuses to continue to act as a primary care provider; or

   e. The department, or its agents, determines that a change of primary care provider is necessary.

History: Effective October 1, 2012.
General Authority: NDCC 50-24.1-04
Law Implemented: NDCC 50-24.1-32; 42 USC 1396u-2

CHAPTER 75-03-21
LICENSING OF FAMILY FOSTER HOMES FOR ADULTS

75-03-21-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Abuse" means the willful act or omission of a caregiver or any other individual which results in physical injury, mental anguish, unreasonable confinement, sexual abuse, or exploitation~~, or financial exploitation~~ to or of a resident.

~~2. "Activities of daily living" means tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the home.~~

~~3.~~ 2. "Agency" means an organization which monitors ~~family foster homes for adults~~ the facility.

~~4.~~ 3. "Applicant" means the individual or individuals completing and submitting to the department an application to be licensed to provide ~~foster~~ care ~~for adults~~.

~~5.~~ 4. "Care" means foster care for adults as defined by North Dakota Century Code section 50-11-00.1 and includes the provision of personal, nonmedical services provided to assist a resident with ~~activities of daily living~~ tasks of a personal nature that are performed daily and which involve such activities as bathing, dressing, toileting, transferring from bed or chair, continence, eating or feeding, and mobility inside the facility.

~~6.~~ 5. "County agency" means the county social service board in the county where the ~~family foster home for adults~~ facility is located and monitored.

~~7.~~ 6. "Department" means the North Dakota department of human services.

~~8.~~ 7. "Exploitation" means the act or process of a provider using the income, assets, or person of a resident for monetary or personal benefit, profit, gain, entertainment, or gratification.

~~9.~~ 8. ~~"Home"~~ "Facility" means a family foster care home for adults.

~~10.~~ 9. "License" means a document issued by the department authorizing an applicant to operate a ~~family foster home for adults~~ facility.

~~11. "Licensed capacity" means maximum number of residents for which the family foster home for adults is licensed.~~

~~12. "Licensing study" means an assessment of the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11.~~

~~13.~~ 10. "Mental anguish" means psychological or emotional damage that requires medical treatment or medical care, or is characterized by behavioral changes or physical symptoms.

~~14.~~ 11. "Monitoring" means overseeing the care provided to a resident by a provider and verifying compliance with laws, rules, and standards pertaining to ~~foster~~ care ~~for adults~~.

~~15.~~ 12. "Neglect" means the failure of the provider to provide the goods or services necessary to avoid physical harm, mental anguish, or mental illness.

~~16.~~ 13. "Provider" means ~~the~~ a primary caregiver in active charge of a ~~family foster home for adults~~ facility who has documented qualifications in providing ~~foster~~ care ~~for adults~~ and is enrolled as a qualified service provider.

~~17.~~ 14. "Qualified service provider" means an individual who has met all standards and requirements for that status established under chapter 75-03-23.

~~18.~~ 15. "Resident" means any adult who is receiving ~~foster~~ care in a ~~family foster home for adults~~ facility for compensation on a twenty-four-hour basis, but does not mean any other individual who lives or stays in the ~~home~~ facility.

~~19.~~ 16. "Respite care" means care provided by a respite care provider or substitute caregiver to ~~an adult family foster care~~ a resident for the purpose of providing temporary relief to the provider from the stresses and demands associated with daily care or emergencies.

~~20.~~ 17. "Respite care provider" means an individual enrolled as a qualified service provider who provides respite care to residents, whose care is funded by the county or state, in the absence of the provider.

~~21.~~ 18. "Sexual abuse" means conduct directed against a resident which constitutes any of those sex offenses defined in North Dakota Century Code sections 12.1-20-02, 12.1-20-03, 12.1-20-03.1, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-06.1, 12.1-20-07, ~~and~~ 12.1-20-11, 12.1-20-12.1, and 12.1-20-12.2.

~~22. "Substantial functional impairment" means a substantial inability, determined through observation, diagnosis, evaluation, or assessment, to live independently or provide self-care resulting from physical limitations.~~

~~23. "Substantial mental impairment" means a substantial disorder of thought, mood perception, orientation, or memory which grossly impairs judgment, behavior, or the ability to live independently, or provide for self-care, and which is determined by observation, diagnosis, evaluation, or assessment.~~

~~24.~~ 19. "Substitute caregiver" means an individual who meets qualified service provider standards and provides respite care to private pay residents in the absence of the provider.

~~25. "Vulnerable adult" means an adult who has substantial mental or functional impairment.~~

~~26. "Willfully" means willfully as defined in North Dakota Century Code section 12.1-02-02.~~

History: Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-02. Application.

1. An application for a license to operate a ~~home~~ facility must be made to the county agency in the county where the applicant proposes to provide ~~foster~~ care ~~for adults~~.

2. An application must be made in the form and manner prescribed by the department.

3. A fee of ~~twenty-five~~ fifty dollars must accompany the application for ~~a~~ an initial license to operate a ~~family foster home for adults~~ facility. A fee of twenty-five dollars must accompany the application to renew a license to operate a facility. The ~~fee~~ fees will be retained by the county agency and used for training and education of the county agency staff who administer the license program.

4. An application for a license must be filed immediately upon change of provider or location.

5. An application is not complete until all required information and verifications are submitted to the department, including:

   a. Fire inspections by the state fire marshal or local fire inspector, if required under subsection 7 of section 75-03-21-06;

   b. A self-declaration of medical history and, when requested by the department, a report of a physician's examination;

   c. A report of psychological examinations, when requested by the department;

   d. Proof of age and relationship, when requested by the department;

   e. Sanitation and safety inspection reports, when requested by the department;

   f. Completed application form;

   g. Drug and alcohol evaluation report, when requested by the department;

   h. Licensing study report assessing the applicant's compliance with this chapter and North Dakota Century Code chapter 50-11;

   i. Documentation of completion of a course related to fire prevention and safety;

   j. Fire safety self-declaration form;

k. Evidence that all caregivers are properly qualified to provide ~~foster~~ care ~~for adults~~ as provided in section 75-03-21-08;

l. A successfully completed criminal background check as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9;

m. Examples of service logs to be used to account for service time and tasks performed for each resident; ~~and~~

n. A family evacuation disaster plan~~.~~; and

o. A sample menu plan compliant with dietary guidelines outlined in subsection 3 of section 75-03-21-11.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-01-09(6), 50-11-03

75-03-21-03. License.

1. Issuance of a license to operate a ~~home~~ facility indicates compliance with the required standards, rules, and laws at the time of issuance.

2. A license is nontransferable.

3. A license is valid only for the individual or individuals named and the premises described on the license.

4. A license is valid only for the maximum number of residents and gender makeup for which the facility is licensed.

~~4.~~ 5. An initial license is valid for no longer than twelve months from the date of issuance.

~~5.~~ 6. A license that is issued after the initial licensing period has expired is valid for no longer than twenty-four months from the date of issuance or the date of expiration of the provider's status as a qualified service provider, whichever occurs first.

~~6.~~ 7. A provider may obtain both a license to operate a ~~family foster home for adults~~ facility and a license as a family foster care home for children, but may not provide ~~care~~ services to both adults and children simultaneously without prior written approval from the department.

~~7.~~ 8. If the ~~home~~ private residence of a native American family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized Indian reservation in North Dakota, an affidavit

from an agent of the tribal ~~social welfare~~ agency or an appropriate tribal officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:

a. That an investigation of the ~~home~~ facility was completed by the tribe's ~~social welfare~~ agency or tribal council.

b. That the prospective ~~home~~ facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

~~8.~~ 9. If the ~~home~~ private residence of an active duty military family, not subject to the jurisdiction of the state of North Dakota for licensing purposes, is located on a recognized military base in North Dakota, an affidavit from an agent of the base ~~social welfare~~ agency or other appropriate military officer may be accepted in lieu of a licensing procedure if the affidavit represents the following:

a. That an investigation of the ~~home~~ facility was completed by the military base's ~~social welfare~~ agency.

b. That the prospective ~~home~~ facility is in compliance with the standards required by North Dakota Century Code section 50-11-02 and this chapter.

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-04. Facility.

1. The ~~home~~ facility must be:

a. Free of warped or damaged floors, loose or unsecured floor coverings, loose tiles, broken or damaged windows, loose or broken handrails, broken light bulbs, and other hazards that would affect the safety of an adult residing in the ~~home~~ facility;

b. Maintained free of offensive odors, vermin, and dampness;

c. Maintained by a central heating system at a temperature of at least sixty-eight degrees Fahrenheit [20 degrees Celsius];

d. Maintained so as to prevent crawling and flying pests from entering the ~~home~~ facility through windows;

e. Equipped with handrails in all stairways;

f. Equipped with nonporous surfaces for shower enclosures; and

g. Equipped with safety mats or slip-preventing materials on the bottom of tubs and floors of showers.

2. Bedrooms for all residents must be constructed as a bedroom with walls or partitions of standard construction which extend from floor to ceiling and which provide privacy for the resident.

3. Bedrooms occupied by one resident must have no less than seventy square feet [6.50 square meters] of usable floor space.

4. Bedrooms occupied by two residents must have no less than one hundred twenty square feet [11.15 square meters] of usable floor space.

5. Bedroom ceilings must be at least six feet and eight inches [203.20 centimeters] above the finished floor surface at the ceiling's lowest point.

6. No more than two residents may be assigned to one bedroom.

7. Bedrooms occupied by residents may not be located in a level of the ~~home~~ facility below grade level unless there are two means of egress, one of which leads to the outside of the ~~home~~ facility.

8. At least one ~~toilet and bathing facility~~ full bathroom must be available on the same floor as any bedroom occupied by a resident.

9. The ~~home~~ facility must have a telecommunication device on the main floor available for use by residents.

10. Use of video surveillance equipment in the resident's bedroom and bathroom is prohibited.

~~10.~~ 11. Mobile home units used as a ~~home~~ facility must:

a. Have been constructed since 1976;

b. Have been designed for use as a dwelling, rather than as a travel trailer;

c. Meet the flame spread rate requirements; and

d. Have a manufacturer's label permanently affixed stating the mobile home meets the requirements of the department of housing and urban development or the American national standards institute.

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-05. Sanitation.

1. Septic tanks or other nonmunicipal sewage disposal systems must comply with chapter 62-03-16, state plumbing code.

2. Rubbish, garbage, and other refuse must be stored in readily cleanable containers and removed from the ~~home~~ facility at least every second day. Rubbish, garbage, and other refuse kept outside of the ~~home~~ facility must be stored in readily cleanable, rodent-proof containers and disposed of weekly.

3. The ~~home~~ facility must be kept reasonably free of animal feces, urine, and hair.

4. Drinking water must be obtained from an approved community water system or from a source tested by a certified laboratory and approved by the state department of health. A copy of the test report must be submitted to the ~~department or its designee~~ county agency. The water and wastewater plumbing systems must comply with article 62-03, state plumbing code.

5. Milk must be obtained from an approved commercial source.

History: Effective May 1, 1992; amended effective September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-06. Safety - Inspections.

1. Pets not confined in enclosures must not present a danger to a resident or the resident's guests based upon the size, temperament, or obedience of the pet. Proof of pet vaccination is required and shall be submitted to the county agency.

2. The ~~home~~ facility must be located where a community or rural fire department is available.

3. Firearms must be stored, unloaded, in a locked cabinet. Any firearms cabinet must be located in an area of the ~~home~~ facility that is not readily accessible to residents.

4. Interior doors with a locking mechanism must be provided with a means to unlock the door from either side.

5. The heating and electrical system must be inspected for operability and safety at the time of the initial license application and periodically thereafter if requested by the department.

6. Food preparation areas, equipment, and food storage areas must be clean, free of offensive odors, and in sound working condition.

7. The department may require that the ~~home~~ facility be inspected by a local fire inspector or the state fire marshal at the time of initial license application and periodically thereafter if the department suspects that the ~~home~~ facility is not fire safe or when structural changes are made to the ~~home~~ facility.

8. Deficiencies noted during an inspection must be corrected within sixty days after the issuance of the inspection report.

9. Any fees for the inspections required by the department or costs associated with correcting deficiencies noted during an inspection must be the responsibility of the applicant or provider.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-07. Insurance.

~~1.~~ The provider shall maintain adequate liability insurance, uninsured motorist coverage, and underinsured motorist coverage, according to the terms and conditions of North Dakota Century Code sections 39-16.1-11, 26.1-40-15.2, and 26.1-40-15.3, on all vehicles operated by the provider or members of the provider's household in which residents may be a passenger.

~~2. The provider shall maintain a minimum household liability insurance coverage of one hundred thousand dollars and premises medical coverage of five hundred dollars per occurrence.~~

History: Effective May 1, 1992; amended effective May 1, 1995; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-08. Provider qualifications.

1. The provider shall:

   a. Be twenty-one years of age or older;

   b. Live continuously in the ~~home in which family foster care for adults is provided~~ facility;

   c. Possess the physical health necessary to ~~aid residents with activities of daily living~~ provide care;

   d. Be literate and capable of understanding instructions and communicating in the English language;

   e. Be free of communicable diseases;

   f. Be in good physical health, emotionally and functionally stable, and not abusing drugs or alcohol;

   g. Be a qualified service provider; and

   h. Successfully complete criminal background check requirements as specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9.

2. In addition to the requirements of subsection 1, the provider shall also:

   a. Provide evidence of competence in:

      (1) The generally accepted procedure for infection control and proper handwashing methods;

      (2) The generally accepted procedure for handling and disposing of body fluids;

      (3) The generally accepted procedure for tub, shower, and bed bathing techniques;

      (4) The generally accepted procedure for hair care techniques, bed and sink shampoo, and shaving;

      (5) The generally accepted procedure for oral hygiene techniques of brushing teeth and cleaning dentures;

      (6) The generally accepted procedure for caring for an incontinent resident;

(7) The generally accepted procedure for feeding or assisting a resident with eating;

(8) The generally accepted procedure for basic meal planning and preparation;

(9) The generally accepted procedure for assisting a resident with the self-administration of medications;

(10) The generally accepted procedures and techniques, which include dusting, vacuuming, sweeping, floor care, garbage removal, changing linens, and other similar tasks, for maintaining a kitchen, bathroom, and other rooms used by residents in a clean and safe condition;

(11) The generally accepted procedures in laundry techniques, which include mending, washing, drying, folding, putting away, ironing, and related work;

(12) The generally accepted procedure for assisting a resident with bill paying and balancing a check book;

(13) The generally accepted procedure for dressing and undressing a resident;

(14) The generally accepted procedure for assisting with toileting;

(15) The generally accepted procedure for routine eye care;

(16) The generally accepted procedure for proper care of fingernails;

(17) The generally accepted procedure for caring for skin, including giving a back rub;

(18) The generally accepted procedure for turning and positioning a resident in bed;

(19) The generally accepted procedure for transfer using a belt, standard sit, bed to wheelchair;

(20) The generally accepted procedure for assisting a resident with ambulation; and

(21) The generally accepted procedure for making beds; or

b. Meet developmental disability competency standards for homes in which the responsible service provider is licensed according to

chapter 75-04-01 and services are provided according to chapter 75-04-07.

History: Effective May 1, 1992; amended effective May 1, 1995; April 1, 1999; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-08.1. Verification and demonstration of competence.

1. A physician, registered nurse, occupational therapist, physical therapist, or other individual with a professional degree in specialized areas of ~~personal~~ care shall verify in writing, on forms furnished by the department, that a provider is competent to perform each procedure specified in subsection 9 of section 75-03-21-08. Verification that a provider is competent to perform a procedure is evidence of competence with respect to that procedure.

2. Competence may be demonstrated in the following ways:

   a. A demonstration of the procedure being performed;

   b. A detailed verbal explanation of the procedure; or

   c. A detailed written explanation of the procedure.

History: Effective April 1, 1999; amended effective September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16
Law Implemented: NDCC 50-11-03

75-03-21-09. General practices. The provider ~~shall~~:

1. ~~Permit~~ Shall permit a representative of the department, county agency, or other ~~agency~~ individual or organization serving a resident entry into the ~~home~~ facility without prior notice;

2. ~~Provide~~ Shall provide information about the residents to the department, county agency, or other ~~agency~~ individual or organization serving a resident with reasonable promptness;

3. ~~Report~~ Shall report illness, hospitalization, or unusual behavior of a resident to the ~~agency~~ individual or organization serving the resident, or to the resident's representative, whichever is appropriate;

4. ~~Assure~~ Shall assure that information related to the resident is kept confidential, except as may be necessary in the planning or provision of care or medical treatment, as related to an investigation or license review under this chapter, or as authorized by the resident;

5. ~~Not~~ May not practice, condone, facilitate, or collaborate with any form of illegal discrimination on the basis of race, color, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;

6. ~~Be willing to~~ Shall accept direction, advice, and suggestions concerning the care of residents from the department, county agency, or other ~~agency representative~~ individual or organization serving a resident;

7. ~~Assure~~ Shall assure that residents receiving care ~~in the home~~ are not subjected to abuse, sexual abuse, neglect, or exploitation;

8. ~~Undergo~~ Shall undergo a medical examination, psychological evaluation, or drug and alcohol evaluation when requested by the department or county agency when there is reason to believe that such an examination or evaluation is reasonably necessary;

9. ~~Authorize~~ Shall authorize the release of a report of any examination or evaluation, required under subsection 8, to the department or county agency;

10. Immediately shall report changes in the identity or number of individuals living in the ~~home~~ facility to the department or county agency;

11. Immediately shall report an inability to ~~carry out the parts of a care plan for which the provider is responsible~~ provide care to the resident to the ~~monitoring~~ county agency ~~and placing agency or individual~~;

12. ~~Allow~~ Shall allow a representative of the department, or ~~its designee~~ county agency, to enter the premises, examine the ~~home~~ facility and records maintained with respect to the residents, and interview the residents, provider, and caregivers in order to evaluate compliance with this chapter;

13. ~~Cooperate~~ Shall cooperate with the department or county agency in inspections, complaint investigations, planning for the care of a resident, application procedures, and other necessary activities, and allow access of the department, county agency, ombudsman, or other authorized individuals to the ~~home~~ facility and its residents;

14. ~~Not~~ May not retaliate against any resident, who has filed a complaint with the department or county agency, by taking away rights or privileges; threatening to take away rights or privileges; or by abusing or threatening to abuse a resident in any manner;

15. ~~Meet~~ Shall meet criteria established by the department for employment outside of the ~~home~~ facility; ~~and~~

16. ~~Be~~ Must be free of influence, control, and direction in the operation of the ~~home~~ facility by the landlord if the ~~home~~ private residence is being rented~~.~~;

17. May not use a transfer of ownership of a resident's possessions or property as payments;

18. May not purchase property or possessions from a resident without providing documented proof to the department that the item or property was purchased at fair market value;

19. May not accept or solicit personal property or a purchased item with a fair market value of at least twenty-five dollars that the resident, resident's family, or both, choose to give to the licensed provider;

20. May not accept or solicit personal property or a purchased item with a fair market value of twenty-five dollars or less that the resident, resident's family, or both, chose to give to the licensed provider exceeding more than two times in a calendar year;

21. For the purpose of this section, fair market value means:

    a. In the case of a liquid asset that is not subject to reasonable dispute concerning its value, such as cash, bank deposits, stocks, and fungible commodities, one hundred percent of apparent fair market value;

    b. In the case of real or personal property that is subject to reasonable dispute concerning its value:

        (1) If conveyed in an arm's-length transaction to someone not in a confidential relationship with the individual or anyone acting on the individual's behalf, seventy-five percent of estimated fair market value; or

        (2) If conveyed to someone in a confidential relationship with the individual or anyone acting on the individual's behalf, one hundred percent of estimated fair market value; and

    c. In the case of income, one hundred percent of apparent fair market value;

22. Shall notify the department if the provider holds, or will be accepting, appointment as a power of attorney agent for a resident. The department may revoke the license of a provider who holds, or will be accepting, appointment as a power of attorney agent for a resident if the department considers it to be a conflict of interest or a result of undue influence.

23. Shall provide the department, upon request, an accounting of the resident's expenses, including receipts, for all deposits and expenditures if the provider is assisting a resident with management of personal funds; and

24. Shall provide twenty-four-hour care and supervision of all residents residing in the facility. Use of a respite care provider or a substitute caregiver is required in the absence of the provider.

History: Effective May 1, 1992; amended effective May 1, 1995; March 1, 1997; April 1, 1999; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03, 50-11-04

75-03-21-09.1. Criminal conviction - Effect on licensure and operation of ~~home~~ a facility.

1. An applicant may not be an individual who has, and may not permit an individual, except a resident, to reside in the ~~home~~ facility or act as a caregiver in the ~~home~~ facility if the individual has been found guilty of, pled guilty to, or pled no contest to:

   a. An offense described in North Dakota Century Code chapters 12.1-16, homicide; 12.1-17, assaults - threats - coercion - harassment; or 12.1-18, kidnapping; North Dakota Century Code sections 12.1-20-03, gross sexual imposition; 12.1-20-03.1, continuous sexual abuse of a child; 12.1-20-04, sexual imposition; 12.1-20-05, corruption or solicitation of minors; 12.1-20-05.1, luring minors by computer or other electronic means; 12.1-20-06, sexual abuse of wards; 12.1-20-06.1, sexual exploitation by therapist; 12.1-20-07, sexual assault; 12.1-20-11, incest; 12.1-20-12.1, indecent exposure; 12.1-20-12.2, surreptitious intrusion, 12.1-22-01, robbery; or 12.1-22-02, burglary, if a class B felony under subdivision b of subsection 2 of that section; North Dakota Century Code chapter 12.1-27.2, sexual performances by children; or North Dakota Century Code sections 12.1-29-01, promoting prostitution; 12.1-29-02, facilitating prostitution; or 12.1-31-05, child procurement; or 12.1-31-07.1, exploitation of a vulnerable adult; or an offense under the laws of another jurisdiction which requires proof of substantially similar elements as required for conviction under any of the enumerated North Dakota statutes; or

   b. An offense, other than an offense identified in subdivision a, if the department determines that the individual has not been sufficiently rehabilitated.

2. For purposes of subdivision b of subsection 1, the department shall treat completion of a period of five years after final discharge or release from

any term of probation, parole, or other form of community corrections, or from imprisonment, without subsequent conviction, as prima facie evidence of sufficient rehabilitation.

3. The department has determined that the offenses enumerated in subdivision a of subsection 1 have a direct bearing on an individual's ability to serve the public in any capacity involving the provision of foster care to adults.

History: Effective April 1, 1999; amended effective September 1, 2004; January 1, 2009; October 1, 2012.
General Authority: NDCC 50-11-03
Law Implemented: NDCC 50-11

75-03-21-10. Substitute caregiver and respite care provider qualifications.

1. A substitute caregiver or respite care provider ~~must~~:

   a. ~~Be~~ Must be eighteen years of age or older;

   b. ~~Not~~ Must not be a resident ~~of the home~~;

   c. ~~Possess~~ Must possess qualifications of a provider specified in subsections 1 and 2 of section 75-03-21-08 excluding subdivision b of subsection 1 of section 75-03-21-08; and

   d. Successfully shall complete criminal background check requirements ~~as~~ specified in North Dakota Century Code sections 50-11-02.4, 50-11-06.8, and 50-11-06.9. If the substitute caregiver's or respite care provider's enrollment as a qualified service ~~provider's enrollment~~ provider lapses for more than thirty days, the criminal background check must be repeated if the individual reapplies for enrollment as a qualified service provider subsequent to the lapse.

2. The provider is responsible for the ~~foster~~ care of residents at all times, even though the duties or tasks of furnishing ~~resident~~ care have been delegated to a substitute caregiver or respite care provider.

3. Respite care providers ~~who are caring for residents whose services are funded by the county or state~~ are limited to the respite care service funding cap. ~~Adult family foster care residents~~ Residents whose care is being paid by the county or state can only receive respite care from ~~an individual who is enrolled by the department as~~ a ~~qualified service provider of~~ respite care provider. Respite care providers shall bill the department for time spent caring for residents ~~whose~~ in their care ~~is being paid for by a county or state agency~~.

4. Substitute caregivers ~~or respite care providers~~ who are providing care to private pay residents may not be left in charge of the ~~home~~ facility for more than one hundred ninety-two calendar days during the twenty-four-month period immediately following the renewal date of the initial license or for more than ninety-six days during the twelve-month period immediately following the date of the issuance of the initial license.

5. For purposes of this section, whenever a substitute caregiver or respite care provider is left in charge of a ~~family foster home for adults~~ facility for more than eight hours during a calendar day, the calendar day will be counted toward the one hundred ninety-two calendar day or ninety-six calendar day limit a substitute caregiver ~~or respite care provider~~ may be in charge of a ~~family foster care home for adults~~ facility or toward the respite care service funding cap to which a respite care provider is limited.

6. Employing individuals other than those who meet the definition of substitute caregiver or respite care provider to provide services to ~~adult family foster care residents~~ a resident is prohibited.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; January 1, 2009; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-11. Meals and nutrition.

1. Three meals must be served daily.

2. There may be no more than fourteen hours between the conclusion of the evening meal and service of breakfast.

3. Each meal must be nutritious and well-balanced in accordance with the recommended dietary allowances of the food and nutrition board of the national research council, national academy of sciences.

4. Adequate amounts of food must be available at all meals.

5. The special dietary needs of the residents must be considered in all menu planning, food selection, and meal preparation.

6. Consideration must be given to residents' cultural, ethnic, and religious backgrounds in food preparation.

7. Meals must be regularly and routinely prepared in the ~~home~~ facility where the residents live.

8. Charges imposed for resident meals provided by individuals or ~~facilities~~ businesses other than the provider must be paid by the provider unless the provider made a meal available at the ~~home~~ facility.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-12. Preadmission ~~information and house rules~~ packet. The provider shall furnish each prospective resident, or the resident's conservator, guardian, ~~relative,~~ or other individual legally responsible for placement~~, the following information~~ with a signed copy of the provider's preadmission packet prior to the resident entering the ~~home~~ facility. A signed copy must be kept in the resident's record. The preadmission packet must include all of the following information:

1. Any restrictions and limitations on the use of alcohol and tobacco;

2. Any restrictions and limitations on the use of the telephone;

3. A statement of other relevant house rules with which the resident will be expected to comply;

~~3.~~ 4. Sample ~~menus~~ menu plan of meals served;

~~4.~~ 5. Procedure concerning the use and management of resident funds;

~~5.~~ 6. Procedure used for billing, collecting, and reimbursing the charge for board, room, and care;

~~6.~~ 7. Policies concerning the furnishing of nonemergency resident transportation by the provider;

~~7.~~ 8. A statement of other relevant house rules with which the resident will be expected to comply; and

~~8.~~ 9. Accurate and complete information regarding the extent and nature of the care available from and to be provided by the provider.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-13. Termination of care.

1. The provider shall terminate care of a resident when ~~such~~ care is no longer required or when the provider is no longer qualified to provide the care needed by the resident ~~receiving care~~.

2. The provider who anticipates the termination of care to a resident shall provide the resident ~~and~~, the resident's representative, if any, and the county agency with at least thirty days' written notice of the termination~~, and~~. The provider shall ~~refer or~~ assist with the transfer of the resident to a setting more appropriate to the resident's needs.

3. If an emergency placement outside of the ~~home~~ facility is needed or a resident is hospitalized and the resident's condition has changed to the extent that the provider is no longer able to provide the resident's care, consideration will be given to waiving the thirty-day written notice required under subsection 2 provided keeping the resident or returning the resident to the ~~home~~ facility would negatively impact the health and well-being of the resident, other residents living in the ~~home~~ facility, or the provider. The department staff responsible for ~~adult family foster~~ care licensing must be contacted by the regional human service center ~~adult family foster~~ care representative prior to making the decision to waive the thirty-day requirement.

History: Effective May 1, 1992; amended effective May 1, 1995; January 1, 2009; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-15. Bases for license action - Permitting operation after notice of revocation. The department may revoke or deny a license for any of the reasons permitted in law, or any combination of reasons. A revocation or denial based on more than one reason must be affirmed, on appeal, if the evidence supports any reason given for revocation or denial. A provider who receives a notice of revocation, and who makes a timely appeal of that notice, may continue to operate the ~~home~~ facility pending a final administrative appeal decision, unless the revocation is based upon reasons which present an imminent danger to the health, welfare, or safety of residents ~~receiving care in the home~~ or unless the license expires.

History: Effective May 1, 1992; amended effective October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-16. Denial or revocation of license. The denial of an application or the revocation of ~~an adult family foster care~~ a license applies to all individuals who applied to be licensed at the ~~home~~ facility or who are listed as providers on the license. An application for a license may be denied or a license may be revoked if:

1. Any conditions set forth in North Dakota Century Code section 50-11-02 as prerequisites for issuance of the license do not exist;

2. The application contains false or misleading material information or the applicant intentionally withholds material information;

3. The license was issued upon false, misleading, or intentionally withheld material information;

4. A licensee, caregiver, employee, or an agent of the facility has violated a provision of this chapter or any of the rules of the department;

5. An applicant, licensee, caregiver, employee, or agent of the facility has been convicted of an offense determined by the department to have a direct bearing upon the individual's ability to serve the public or residents of the facility, or the department determines, following conviction of any other offense, the individual is not sufficiently rehabilitated under North Dakota Century Code section 12.1-33-02.1;

6. The ~~home~~ facility, or the premises proposed for the ~~home~~ facility, is not being or will not be maintained according to this chapter;

7. The ~~home~~ facility, or the premises proposed for the ~~home~~ facility, is not in sanitary condition or properly equipped to provide good care for all residents who may be received;

8. The provider or proposed provider is not properly qualified to carry out the duties required;

9. The ~~home~~ facility, or the premises proposed for the ~~home~~ facility, is not being conducted or is not likely to be conducted for the public good in accordance with sound public policy and with due regard for the health, morality, and well-being of all residents ~~cared for~~; or

10. The provider or proposed provider is not a reputable and responsible individual.

History: Effective May 1, 1992; amended effective May 1, 1995; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-17. Distribution of notice of denial or revocation. A copy of a notice of revocation or a notice of denial of a license application may be provided to any resident, any individual who resides in a place under circumstances which may require that place to be licensed as a ~~home~~ facility for care of that individual, to any guardian, conservator, ~~placement~~ county agency, or individual making placement

of ~~such a~~ that resident or individual~~, and to any placement agency which has placed residents for care in the home or in other licensed homes in the region~~.

History: Effective May 1, 1992; amended effective September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-19. Provisional license. The department may issue a provisional license to an applicant who has previously held an unrestricted license.

1. Any provisional license issued must be accompanied by a written statement identifying in what respect the applicant or the ~~home~~ facility does not comply with North Dakota Century Code chapter 50-11 and rules governing the provision of ~~foster~~ care ~~for adults~~, signed by the regional director of the human service center, or the director's designee, and, in writing, be acknowledged by the provider.

2. The applicant shall comply with North Dakota Century Code chapter 50-11 and the rules of the department within the period of time the provisional license is in effect.

3. A provisional license must:

   a. Prominently state that the ~~home~~ facility has failed to comply with all applicable laws and rules of the department;

   b. State that the items of noncompliance are set forth in a written statement available upon request made to the ~~operator~~ licensed provider;

   c. Expire on a set date, not to exceed six months from the date of issuance; and

   d. Be replaced by an unrestricted license, if the applicant demonstrates compliance satisfactory to the department with all applicable laws and rules within the period of time the provisional license is in effect.

4. A provisional license must be issued only to an applicant who has, in writing, waived:

   a. The right of a written statement of changes as to the reasons for the denial of an unrestricted license; and

   b. The right to an administrative hearing, in the manner provided in North Dakota Century Code chapter 28-32, concerning the denial of an unrestricted license either at the time of application or during the period of operation under a provisional license.

5. Subject to the exceptions contained in this section, a provisional license is equivalent to an unrestricted license.

History: Effective May 1, 1995; amended effective October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-21. Penalties. A licensed ~~operator~~ provider, if issued a notice of noncompliance with a correction order, must be assessed fiscal sanctions.

1. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of twenty-five dollars per day: subsections 1, 3, 4, 5, 7, and 9 of section 75-03-21-04; section 75-03-21-05; subsections 3, 4, 5, and 6 of section 75-03-21-06; subsection 4 of section 75-03-21-09; subsection 1 of section 75-03-21-10; subsections 3 and 4 of section 75-03-21-11; and subsection 1 of section 75-03-21-13.

2. A violation of any of the following sections subjects the licensed provider to a fiscal sanction of fifteen dollars per day: subsections 6 and 8 of section 75-03-21-04; subsection 13 of section 75-03-21-09; and section 75-03-21-12.

3. A violation of any other provision of this chapter not noted in subsections 1 and 2 subjects the licensed ~~operator~~ provider to a fiscal sanction of five dollars per day.

History: Effective May 1, 1995; amended effective April 1, 1999; September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03

75-03-21-22. Records. The following records must be kept and maintained for each resident in the ~~home~~ facility:

1. The resident's full name and birth date;

2. The name, address, and telephone number of the resident's legal representative when one exists and an emergency contact;

3. Names, addresses, and telephone numbers of individuals who can assume responsibility or consent to health care under North Dakota Century Code section 23-12-13 for the resident if the legal representative cannot be reached immediately in an emergency;

4. The daily ~~personal~~ care needed and provided to the resident and the name of the individual or individuals who provided the care; ~~and~~

5. A record of any matter required to be reported under subsection 3 of section 75-03-21-09 and of any accident resulting in injury to a resident~~.~~; and

6. An accounting of any real or personal property the resident or the resident's family gives, sells, or otherwise transfers to the provider or provider's family.

History: Effective May 1, 1995; amended effective September 1, 2004; October 1, 2012.
General Authority: NDCC 50-06-16, 50-11
Law Implemented: NDCC 50-11-03